

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' BRIEF

KARL BENZ and
CATHERINE RILEY
Appellants pro se

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COURT OF APPEALS DIV I
STATE OF WASHINGTON

TABLE OF CONTENTS

INTRODUCTION1

ASSIGNMENTS OF ERROR2

A. Assignments of Error.....2

B. Issues Pertaining to Assignments of Error2

STATEMENT OF THE CASE.....5

A. Procedural History5

B. Factual Background14

2. Motion to Vacate Judgment.....14

**2. Motions for Contempt, Sanctions, Pre-filing
 Order, Vexatious Litigants19**

ARGUMENT.....29

A. Standard and Scope of Review.....29

**1. Order Denying CR 60(b)(11) Motion to
 Vacate Judgment29**

**2. Order Granting Contempt Based on
 Insufficient Evidence29**

**3. Order Granting Sanctions Based on
 Insufficient Evidence and Absent a Finding
 Regarding a Material Issue29**

**4. Order Granting Motion to Find Vexatious
 Litigants Requiring a Pre-Filing Order
 Based on Faulty Findings of Fact30**

5. Violation of Due Process30

B.	Abuse of Discretion	31
C.	Good Cause Existed for the Court to Grant Benz and Riley’s CR60(b)(11) Motion to Vacate Which Would Have Served Justice.....	31
1.	Exgtraordinary Circumstances	32
2.	Unjust Enrichment	32
3.	Precedent Set by Vacating Against Dickson	34
4.	Underlying CR 11 Sanctions Proven to Be Unfounded	35
D.	The Trial Court Erred in Granting Contempt And Sanctions Against Benz and Riley Absent a Finding Regarding a Material Issue and Therefore Absent Sufficient Evidence	36
E.	The Trial Court Erred in Granting Town’s Motion For a Pre-filing Order and Finding Benz and Riley as Vexatious Litigants as Contrary to Law, Contrary to Facts and an Abuse of Discretion.....	39
1.	A Pre-Filing Order is an Extreme Remedy, Was Not Warranted and Should Not Have Been Granted	39
2.	The Town’s Motion for Order Finding Benz And Riley to be Vexatious Litigants Failed To Provide and Accurate Record For Review Required for Such a Finding	40
F.	The Trial Court Deprived Benz and Riley’s Due Process When it Refused to Allow Their Oral Argument and Demonstrated Bias While Granting the Town’s Oral Argument	44
	CONCLUSION	50

TABLE OF AUTHORITIES

Cases

<i>Baldwin v. Hale</i> , 68 U.S. (1 Wall.) 223, 233 (1863)	45
<i>Bay v. Jensen</i> , 147 Wn. App. 657, 196 P.3d 753 (2008).....	30
<i>Cromer v. Kraft Foods N. Am., Inc.</i> , 390 F.3d 812, 817 (4 th Cir. 2004)	40
<i>DeLong v. Hennessey</i> , 912 F.2d at 1147 (9th Cir. 1990).....	40
<i>Dep't of Ecology v. Campbell & Gwinn, LLC</i> , 146 Wn.2d 1, 9, 43 P.3d 4(2002).....	30
<i>Dragt v. Dragt/DeTray, LLC</i> , 139 Wn. App. 560, 576 161 P.3d 473 (2007)	34
<i>Fuentes v. Shevin</i> , 407 U.S. 67, 80-81 (1972)	45
<i>Chevalier v. Woempner</i> , Wn. App., 290 P.3d 1031 (2012).....	38, 44
<i>Haley v. Highland</i> , 142 W.2d 135, 156, 12 P.3d 119 (2000)	29
<i>Hurtado v. California</i> , 110 U.S. 516, 535 , 4 S. Sup. Ct. 111.	49
<i>In re Furrow</i> , 115 Wash.App. 661, 63 P.3d 821	32
<i>In re Marriage of Jennings</i> , 138 Wn.2d 612, 625-26, 980 P.2d 1248 (1999)	29
<i>In re Marriage of Skarbek</i> , 100 Wn. App. 444, 447, 997 P.2d 447 (2000)	30
<i>Joint Anti-Fascist Refugee Committee v. McGrath</i> , 341 U.S. 123, 170-71 (1951)	45
<i>Logan v. Zimmerman Brush Co.</i> , 455 U.S. 422, 429, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982)	40
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 333 (1976)	45

<i>Meyer v. Nebraska</i> , 262 U. S. 399 (1923)	50
<i>Molski v. Evergreen Dynasty Corp.</i> , 500 F.3d 1047, 1057 (9th Cir. 2007)	40, 43
<i>Molski v. Evergreen Dynasty Corp.</i> , 521 F.3d 1215 (2008 Amended)	42, 43
<i>Moreman v. Butcher</i> , 126 Wash.2d 36, 40, 891 P.2d 725 (1996)	31
<i>Moy v. United States</i> , 906 F.2d 467, 470 (9th Cir.1990)	40
<i>Omni Group, Inc. v. Seattle-First Nat'l Bank</i> , 32 Wn.App. 22, 28, 645 P.2d 727, review denied, 97 Wn.2d 1036 (1982)	39
<i>Pacesetter Real Estate, Inc. v. Fasules</i> , 53 Wn.App. 475, 767 P.2d 961 (1989)	39
<i>Pierce County v. State</i> , 185 P.3d 594, 144 Wash.App. 783 (2008)	34
<i>Saldivar v. Momah</i> , 145 Wn. App. 365, 402, 186 P.3d 1117 (2008) ...	30
<i>Scott v. Trans-Sys., Inc.</i> , 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003)	30
<i>State v. Finch</i> , 137 Wn.2d 792, 808, 975 P.2d 967 (1999)	46
<i>State v. Lewis</i> , 115 Wash.2d 294, 298-99, 797 P.2d 922 (1990)	30
<i>State v. Rohrich</i> , 149 Wash.2d 647, 654, 71 P.3d 638 (2003)	31
<i>State v. Rundquist</i> , 79 Wash.App. 786, 793, 905 P.2d 922 (1995)	31
<i>State v. Ward</i> , 104 P.3d 751, 125 Wash.App. 374 (Wash.App.Div.1 (2005))	32
<i>Sunnyside Valley Irrigation Dist. v. Dickie</i> , 149 Wn.2d 880 (2003)	30, 38
<i>Tatham v. Rogers</i> , 170 Wn.App. 76, 96, 283 P.3d 583 (2012)	35
<i>Truax v. Corrigan</i> , 257 U.S. 312, 332 (1921)	49

<i>Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.</i> , 122 Wn.2d 299, 338-339, 858 P.2d 1054 (1993)	30
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<i>Weiss v. Lonquist</i> , 173 Wn. App. 344, 363, 293 P.3d 1264, review denied, 178 Wn.2d 1025 (2013)	29
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Statutes

RCW 7.21.030	37
SMC 15.25.070	2

Rules

CR 60 (b)(11).....	32, 35
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Other Sources

U.S. Constitution, Amendment I	43
U.S. Constitution, Amendment XIV, Section 1	45
Washington Code of Judicial Conduct, Preamble	47
Washington Code of Judicial Conduct, Scope	47

INTRODUCTION

This case involves Complaint (the ‘Complaint’) by Respondent Town of Skykomish (the ‘Town’), regarding the historic Skykomish Hotel (the ‘Subject Property’) against incorrectly identified and irrelevant defendants, Investors Property Services, LLC. and Evergreen Properties, Inc.

Defendant Skykomish Hotel LLC, which owns the Subject Property (not named in the Town’s underlying administrative actions but was added as a defendant in the Complaint) is owned by appellant Karl Benz (‘Benz’).

Investors Property Services LLC (‘Defendant IPS-WA’) and Evergreen Properties, Inc. (‘Defendant EPI’), both Washington entities, are owned by Appellant Catherine Riley (‘Riley’) and never had any ownership or financial interest in the Subject Property.

The Subject Property was acquired by Benz’ Colorado limited liability company, Investor’s Property Service, LLC (which never had any relationship to Riley or any of her entities) and was later transferred to Defendant Hotel. Neither Benz nor Riley personally are parties to the trial court action.

The Town’s underlying administrative pleadings however named only one entity, Riley’s Defendant IPS (further wrongfully stating “Which Acquired Title as Investor’s Property Service, LLC and Also

dba Skykomish Hotel). The underlying administrative pleadings failed entirely to identify the owner of the Subject Property and failed to notify a bona fide lienholder of record, Evergreen Properties, Inc., a Florida corporation ('Defendant Lienholder'), as required by Town ordinance, SMC. 15.25.070. The Town proceeded to file its Complaint in King County Superior Court, wrongfully pursuing parties having no relation to the Subject Property.

Benz and Riley became judgment debtors along with their former legal counsel Thomas L. Dickson and his law firm ('Dickson'), as a result of the Town's mishandling of the case and the admitted error on the part of the initial trial judge in granting the judgment, which was later vacated against Dickson. During the course of the case, Benz and Riley signed legitimate court documents prepared by legal counsel on behalf of their entities, the legitimacy of which was later validated by the Court in vacating the CR 11 judgment against Dickson.

Also involved in the case were extensive counterclaims by Defendant Hotel. As a result of Dickson's mishandling of the case, causing severe damage to defendants' position and depletion of Benz's resources, and the Town's long and ardent pursuit of its goal to acquire the Subject Property, Defendant Hotel's counterclaims were dismissed on October 31, 2014.

This appeal relates to three separate rulings by the trial court.

The first ruling was denial of Benz and Riley's Motion to Vacate Judgment against them in favor of the Town. The judgment was for CR 11 sanctions obtained against Benz, Riley and Dickson, which Dickson was later able to vacate without ruling from the Appeal Court, with the trial court partially reversing its initial denial on the Motion for Reconsideration regarding the sanctions judgment.

As will be shown, this judgment is duplicative in nature, and has already been satisfied by the Sheriff's sale of Subject Property.

The Town's legal counsel, David S. Carson ('Carson') stated in open court that the sale of the Subject Property would satisfy the all the judgments in favor of the Town, without limitation or qualification, including the judgments against Benz and Riley.

The trial court had already acknowledged in a prior ruling that the judgment against Benz and Riley was duplicative in nature yet denied their motion to vacate. As a result, the Court thereby facilitated considerable unjust enrichment to the Town, to the detriment to Benz.

The second ruling addressed herein was the partial granting the Town's October 8, 2014 motion for contempt, sanctions and to appoint a receiver. Contempt was granted which is a subject of this appeal.

The third ruling addressed in this appeal was the trial court's granting of the Town's December 17, 2014 motion for sanctions and a

pre-filing order (to find Benz and Riley vexatious litigants).

ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in denying Benz and Riley's CR 60(b)(11) motion to vacate as the ruling was contrary to the facts and an abuse of discretion.
2. The trial court erred in granting the Town's motion for contempt as the ruling was contrary to the facts and an abuse of discretion.
3. The trial court erred in granting the Town's motion for sanctions as the ruling was contrary to law, contrary to the facts and an abuse of discretion.
4. The trial court erred in granting the Town's motion for a pre-filing order and a finding of Benz and Riley as vexatious litigants as the ruling was contrary to law, contrary to the facts and an abuse of discretion.
5. The trial court erred in failing to allow Benz and Riley's oral argument at the hearing on the motion for sanctions and a pre-filing order, while allowing the Town's attorney to present oral argument, as that failure constitutes a denial of their due process.

B. Issues Pertaining to Assignments of Error

1. The trial court failed to properly consider all the applicable facts, and arbitrarily and unreasonably applied selective facts in denying the

motion to vacate.

1. The trial court failed to properly consider all the facts including but not limited to the Town's own culpability in preventing Benz and Riley from being able to respond fully to the discovery, and improperly ruled Benz and Riley to be in contempt.

2. The trial court failed to properly consider all the facts including but not limited to the Town's continuing culpability in preventing Benz and Riley from being able to purge the prior contempt order, and improperly granted sanctions against them.

3. The trial court failed to properly consider all applicable law and all facts, and thereby improperly adjudged Benz and Riley to be vexatious litigants.

4. The trial court denied Benz and Riley's due process by refusing to allow their oral argument, while allowing the Town's attorney to present oral argument, and thereby improperly imposed sanctions against Benz and Riley and ruled Benz and Riley to be vexatious litigants.

STATEMENT OF THE CASE

A. Procedural History:

The Town filed their Complaint/Petition for Declaratory Judgment; Warrant of Nuisance; and Injunctive Relief ('Complaint') on February 24, 2012, naming and serving corporate entities owned by Riley, which had

no ownership or financial interest in the Subject Property. (CP 1-20).

The Town's Complaint came after its administrative Notice and Complaint and Findings of Fact and Conclusions of Law and Order both of which also failed to name and serve the correct parties in interest of the subject property, knowingly and incorrectly naming only Riley's WA limited liability company stating that it had acquired the subject property, and another of Riley's corporate entities, and excluding altogether Defendant Lienholder who was in possession of a bona fide and recorded lien against the Subject Property. As a result of naming an incorrect entity in its administrative proceeding and failing to identify the correct owner of the subject property as well as a bona fide lienholder, their subsequent administrative hearing was not legally held, despite incorrect findings by the trial court to the contrary.

On July 6, 2012, the court granted a motion by BNSF Railway for a protective order (CP 1372-1374).

On August 23, 2012, the defendant entities, through counsel, filed their Answer to the Complaint and Counterclaims (CP 1375-1396) against the Town for intentional interference with business expectancy, negligence, breach of contract, trespass, nuisance, and claims for violations of Defendants constitutional rights under the state and federal constitutions, further clarifying that the Town had not named or served the

correct parties, namely the true owner of the subject property, nor the lienholder. (CP 1376, pg. 2, Footnotes 1 and 2).

On October 9, 2012, after refusing to release the incorrectly named parties, the Town served the Summons (CP 1397-1398) and Complaint on Defendant Lienholder, knowing it had no ownership or controlling interest in the subject property and that it had not received the Town's notice of its administrative action over a year prior as required by its own ordinance.

The Town filed a motion for partial summary judgment on March 21, 2013, which was granted on April 19, 2014, essentially concluding the Town's cause of action by granting it the remedies it had sought in the Complaint. (CP 1399-1402). (RP #1, pg. 6, ln. 25 thru pg. 7, ln. 3).

Defendant Lienholder filed its answer and for months, the Town refused to release Defendant Lienholder and the incorrectly sued defendants; on the contrary continued its pursuit of Defendant Lienholder, racking up unjustified legal fees in its attempt to bankrupt Benz and Riley and acquire the Subject Property, all of which was confirmed by the Town's ultimate dismissal of Defendant Lienholder (CP 101-103 and 323-324) and its recent acquisition of the Subject Property (CP 1546-1547).

Shortly thereafter, Defendant Lienholder changed legal counsel and on August 27, 2013, the town filed its motion to dismiss Defendant Lienholder (CP 310-314). The affidavit confirmed Defendant Lienholder's

bona fide position as a party in interest requiring notification of the Town's administrative action, which the Town failed to do. (CP 312-314).

On August 26, 2013, the Town pursued CR 11 sanctions based on unsubstantiated allegations and filed its Motion for Fees and Sanctions Under Civil Rule 11 asserting that the defendants had made numerous statements in pleadings with regard to Defendant Lienholder being a bona fide lender of record. The Town further wrongfully alleged that Defendant Lienholder was not in fact a bona fide lienholder (CP 23-48) which simply was not true and despite confirmation to the contrary contained in Defendant Lienholder's affidavit. (CP 312-314).

On September 6, 2013, Benz and Riley's entities filed a Memorandum in support of the motion to dismiss the lienholder and to clarify the Town's misrepresentations to the Court, primarily correcting the Town's statements that Defendant Lienholder was not a bona fide lienholder, which statements were wholly contradicted by Defendant Lienholder's affidavit (CP 312-314).

On September 6, 2013, Dickson filed a response to the Motion for fees and sanctions (CP 54-63) and Benz and Riley also September 6, 2013, filed a response on (CP 78-89) and Declaration of Benz (CP 76-77).

The Town filed its reply on September 9, 2013 (CP 90-100).

Also on September 9, 2013, the Town filed a Stipulation and

Agreed Order of Dismissal of Defendant Lienholder (CP 101-103). The final order dismissing Defendant Lienholder was filed on September 13, 2013 (CP 323-324).

On September 13, 2013, the Court also granted the Town's motion for fees and sanctions against Benz, Riley and Dickson (CP 104-109).

The Town filed its motion for entry of the judgment on September 18, 2013 (CP 110-112) and the declaration of Carson in support thereof setting forth the charges constituting the amount of the judgment requested. (CP 325-351).

On October 7, 2013, judgment was entered against Benz, Riley and Dickson in the amount of \$37,661.18 (CP 144-145).

As the result of numerous attempts over preceding months by Dickson to withdraw from the case, all of which were denied by the court, on October 11, 2013, he filed for discretionary review which was granted by the appeals court regarding the denials of his requests for withdrawal. (CP 1403-1411).

Dickson then filed notice of appeal of the order and judgment for sanctions on October 29, 2013, however he failed to file on behalf of his clients Benz and Riley. (CP 1412-1417).

On November 26, 2013, Defendant Hotel, entered into a purchase and sale transaction to sell the subject property. The transaction was for

\$349,000 plus assumption of all of the judgments in favor of the Town in this case. The transaction provided payment in full of all judgments owing to the Town as well as for restoration of the Subject Property to begin in earnest resolving all of the Town's complaints of nuisance. The sale failed solely due to the Town's refusal to cooperate with the buyer in the assignment of the judgments to the buyer and executing a subordination agreement to the seller's deed of trust.

On January 17, 2014, the Town filed its motion and affidavit for examination of Defendant Hotel and judgment debtors Benz and Riley (CP 381-385) and on January 21, 2014 orders for supplemental proceedings were issued. (CP 386-392).

Hearing on the supplemental proceedings was scheduled for March 6, 2014. (CP 381-391).

The Town made a single attempt to serve the orders on January 29, 2014, despite knowing that the parties were outside the state of Washington, via a process server vendor (CP 533-534).

On February 6, 2014, the Town filed its motion for the order to serve by email (CP 394-402) with process server's affidavit attached, which was granted the same date by a superior court commissioner pro tem (CP 403-404). The affidavit contained perjured statements.

On February 26, 2014, Benz and Riley, through new limited

appearance legal counsel Kenneth Berger, filed a motion to strike the orders for supplemental proceedings due to lack of proper service. (CP 424-453). Order of continuance was entered on March 6, 2014, allowing for responses to interrogatories by July 2, 2014 (CP 460-462).

March 21, 2014, Dickson, pursuant to leave granted during earlier attempts to withdraw, filed a Brief in support of withdrawal *nunc pro tunc* (CP 490-502) and Errata to the brief on March 24, 2014 (CP 146-161).

The town filed response on March 25, 2014 (CP 162-167) and Benz and Riley, mistakenly filing as defendants rather than judgment debtors, filed on March 26, 2014 objection which contained their motion for vacation of the judgment against them (CP 503-519).

Judge Spector granted the withdrawal and vacation of the judgment against Dickson on March 28, 2014 (CP 170) but refused to vacate against Benz and Riley stating their motion was ‘not properly before the court’.

On March 31, 2014, Judge Spector recused herself (CP 1418).

Benz and Riley filed a motion on June 20, 2014 (CP 520-541) to strike the supplemental proceedings which was denied by the court on June 19, 2014 (CP 644-646).

On July 18, 2014, the Town filed its motion for entry of Judgment against Defendant Hotel and Declaration Carson based on order granting partial summary judgment obtained on April 19, 2013 (CP 1399-1402).

Defendant Hotel and Benz and Riley filed opposition to the entry of judgment (CP 1419-1430) on July 30, 2014. Exhibits to the opposition were correctly filed on August 14, 2014 (CP 1431-1469).

On September 15, 2014, Benz and Riley filed Motion for order to show cause and for order to vacate the judgment (CP 171-214) along with declarations of Benz (CP 215-216) and Riley (CP 217-218).

The Town's motion for entry of judgment against Defendant Hotel was granted on October 1, 2014 (CP 1470-1471).

On October 8, 2014, the Town filed its response to the motion to vacate (CP 262-279).

October 8, 2014, the Town also filed a motion for contempt against Defendant Hotel, Benz and Riley alleging responses to interrogatories were insufficient, and to appoint a receiver to take control of the Subject Property (CP 740-975), along with Carson's declaration (CP 221-261).

Benz and Riley filed their response to the motion for contempt and for a receiver on October 27, 2014 (CP 1109-1140) along with declaration of Benz (CP 1472-1535).

On October 29, 2014, the Town filed its reply on the motion for

contempt and for receiver on October 29, 2014 (CP 1141-1145).

Additional declarations were filed on October 21, 2014 to support the Town's motion, one by town Mayor Tony Grider (CP 1087-1095) and a second declaration by Carson (CP 1096-1101).

On October 31, 2014, the court granted the Town's motion for contempt, reserving ruling on sanctions and appointment of a receiver (CP 1146-1148) and denied Benz and Riley's motion to vacate (CP 299-300).

On November 25, 2014, Benz and Riley filed the notice of appeal for review of two rulings, first the court's denial of their motion to vacate judgment, and second, the trial court's granting the Town's motion for contempt, the first of two notices giving rise to this appeal. (CP 301-309).

On December 17, 2014, the Town filed yet another motion for entry of judgment against Defendant Hotel, along with a second motion for sanctions, and for a pre-filing order and determination of Benz and Riley as vexatious litigants (CP 1149-1251). Attached to the motion for sanctions, as publicly filed unsealed documents, as Exhibits E and F (CP 1209-1231) were copies of items in violation of the protective order obtained by BNSF Railway on July 6, 2012 (CP 1372-1374).

December 30, 2014, Benz and Riley filed response to the motion for sanctions and a pre-filing order (CP 1252-1291) and Benz declaration Benz (CP 1292-1297). The Town's reply was filed on December 31, 2014

(CP 1363-1367).

December 30, 2014, Benz as judgment debtor filed a memorandum of information to the motion for entry of judgment against Defendant Hotel (CP 1298-1360); Town reply was filed December 31, 2014 (CP 1361-1362).

On January 2, 2015, both motions were heard and ruled upon. The motion for entry of judgment against Defendant Hotel was granted (CP 1536-1537). The motion for sanctions and for a pre-filing order was also granted, with additional judgment against Skykomish Hotel LLC, Benz and Riley. (CP 1368-1371).

Benz and Riley then filed their second notice of appeal on January 28, 2015, for review of the court's granting of the Town's motion for sanctions and a pre-filing order. (CP 1539-1545). The appeals were consolidated at the Court's behest on February 26, 2015.

The Town subsequently filed the required paperwork to obtain writ of execution to sell the subject property to satisfy the judgments. Sheriff's sale was held and the Town filed its motion for confirmation of the sale. The order of confirmation was filed on April 24, 2015 (CP 1546-1547).

B. Factual Background

1. Motion to Vacate:

Benz and Riley filed their motion to vacate (CP 171-214) based on a number of factors. After a timely filed motion for reconsideration of the

order granting the sanctions (CP 104-109) was denied, Dickson appealed but failed to file on behalf of his clients Benz and Riley. Months later, Dickson obtained an order vacating the judgment against himself (CP 170) by including an implied CR 60(b) motion to vacate in his Brief in Support of Withdrawal of Counsel *Nunc Pro Tunc*, (CP 146-161 and 490-502) (the 'Brief'), requesting withdrawal as of May 5, 2013 (CP 148, Ins. 23-25).

According to the Town's response to the Brief, Dickson misrepresented to opposing counsel that the Brief was for a purpose other than his implied motion to vacate (CP 163, Ins. 7-14), that being solely to show good cause why Dickson should be allowed to withdraw as counsel for defendants and Benz and Riley.

Judge Spector granted Dickson's motion for withdrawal *nunc pro tunc*, effective as of as July 30, 2013, well as his implied motion to vacate and denied vacating the judgment against Benz and Riley as being 'not properly before the court' at that time.

Immediately after Judge Spector granted the withdrawal and vacated the judgment against Dickson she recused herself (CP 1418). At the hearing on the Brief, she acknowledged that she erred (CP 210) in granting the sanctions, as was laid out in the Brief (CP 153, Ins. 25 thru CP 154, line 5).

At the hearing on Benz and Riley's motion to vacate, Carson

mistakenly summarized the trial court ruling on Dickson's Brief as *"I'm going to let you out back when you first wanted to get out. And to me, "letting you out" means, "I really have to undo the CR 11 sanctions."* (RP#1, pg. 28, lns. 22-25). However, Carson's faulty summary that the court granted withdrawal as of an earlier date, thereby giving grounds to vacating against Dickson, is fatally flawed. The date Dickson was allowed to withdraw is germane to vacating the judgment against Dickson and by extension against Benz and Riley.

The trial court did not have to vacate the judgment against Dickson. It could have allowed the withdrawal leaving the sanctions judgment in place as it did for Benz and Riley. However, the court clearly reversed its earlier decisions on the motion for sanctions and the motion for reconsideration and vacated against Dickson despite allowing his withdrawal to be effective long after the purportedly sanctionable conduct occurred. The same consideration must be given to Benz and Riley and should have been given when their motion to vacate was properly before the court.

Judge Spector's granting Dickson's implied motion to vacate, without any ruling from the Court of Appeals, essentially reversing, months later, her denial of Dickson's motion for reconsideration of the sanctions order (CP 171), sets the precedent that the judgment must also

be vacated against Benz and Riley.

The implied motion to vacate in Dickson's Brief rested on the fact that the original CR11 sanctions motion was baseless due to the bona fide lienholder position of Defendant Lienholder's deed of trust against the Subject Property, thereby justifying all of the documents executed by Benz and Riley on behalf of their entities to support the court filings of their defendant entities (CP 153, ln. 24 thru 154 ln. 5).

The grounds upon which Judge Spector vacated the judgment against Dickson are also sufficient grounds, among other grounds as discussed below, upon which to vacate the judgment against Benz and Riley. This is also confirmed by the affidavit of Defendant Lienholder's principal, Antonio Alvarez (CP 312-314) confirming his bona fide lienholder position, the purported non-existence of which lienholder position the Town based its entire motion for the CR11 sanctions upon.

Significantly, Judge Linde, acknowledged that the judgment against Benz and Riley was duplicative in nature (CP 1471, lns. 16-21) but denied their motion to vacate anyway.

At the hearing on the motion to vacate, the court acknowledged the duplicative judgments and confirmed its intentions in a related written ruling granting judgment against Defendant Hotel, essentially that the Town was only entitled to the \$113,297.78 in total at that time. (RP #1,

pg. 30, lns 12-24).

In addition to maintaining the manifestly unjust duplicative judgments, the denial served to facilitate unjust enrichment to the Town, as the Town has now acquired the Subject Property (CP 1546-1547) valued far in excess of judgments awarded to it.

The Subject Property was in escrow scheduled to close in March of 2014 with all issues resolved save for the Town approving the buyer's agreement to assumption of all the judgments and agreeing to subordinate to the seller's (Skykomish Hotel LLC) owner financed deed of trust. The full value of the sale was in excess of \$500,000, constituting unjust enrichment to the Town of over \$350,000.

Most importantly, the Town, through its legal counsel, accepted as satisfaction of all judgments the sale of the Subject Property (RP #2, pg. 24, ln. 11 thru pg. 25, ln. 1). The trial court gave the Town the choice of pursuing the supplemental proceedings against Defendant Hotel, Benz and Riley, or in the alternative receiving the court's authorization to proceed with the sheriff's sale of the Subject Property to satisfy the judgments (RP #2, pg. 24, lns. 14-25). The Town elected the order for the authorization to sell the Subject Property. The sale of the Subject Property was confirmed on April 24, 2015 (CP 1546-1547).

1. Motions for Contempt, Sanctions, Pre-filing Order, Vexatious Litigants:

The Town moved the trial court (CP 381-385) for orders for supplemental proceedings, requiring personal service, to be scheduled for March 6, 2014. The orders were issued on January 21, 2014 (CP 386-392). Due to Benz and Riley being out of the state, would have required sixty days' notice. The Town was desperate to achieve service.

The Town filed its motion for an order to serve the orders via email (CP 394-402) based on an affidavit of a single attempt at service which contained perjured information and despite the requirement for personal service of these orders, the commissioner pro tem granted the motion for electronic service (CP 403-404).

Subsequently, Benz and Riley, through new limited appearance legal counsel Kenneth Berger, filed a motion to strike the orders for supplemental proceedings due to lack of proper service. (CP 454-459). As a result, the supplemental proceedings were re-scheduled and arrangements were made via stipulation for Benz and Riley to provide answers to interrogatories rather than appear in (CP 460-462).

Interrogatories seeking information over a six year period were served on Mr. Berger and forwarded to Benz and Riley. On May 24, 2014, Mr. Berger passed away in a private plane crash.

In as much as Benz and Riley had not been informed by their now deceased legal counsel that their agreement to the stipulation waived their right to challenge the service of the orders for electronic service of the supplemental proceedings orders, they attempted to set aside the supplemental proceedings for lack of proper service by filing their own motion to strike the proceedings (CP 520-541) which was denied (CP 644).

Responses to the interrogatories were provided to the Town on July 2, 2014, providing as much information as possible in light of Benz and Riley remaining out of the State of Washington and due to their documents being located in the Subject Property, which had been under the exclusive possession and control of the Town since early 2013.

Numerous objections were made as to many of the requests being unduly burdensome. All statements and representations contained in the responses are truthful and complete to the extent possible with the limited information recalled and available at the time. At no time has the Town presented any evidence of any untruthful answers.

Sometime during the spring or summer of 2013, the Town arbitrarily and without notice broke in and changed the locks on the Subject Property (CP 1088, Ins. 1-8).

As a result, personal, financial and attorney-client privileged documents belonging to Benz and Riley and their entities, constituting

most of the information sought in the interrogatories was not available or accessible to Benz and Riley who did not possess a new key and remained outside of Washington.

Moreover, and of great concern to Benz and Riley, the documents had been in possession of the Town for over a year and a half, during which time the Town had ample opportunity to remove, alter, copy, relocate and disseminate or, worse, destroy the documents.

At the hearing on the Town's later sanctions motion, the trial court not only failed to address Benz and Riley's objections, but also failed to take into account the period of time in which the documents were in control of the Town, and its failure and refusal to return the documents via an independent third party for verification (RP #2, pg 21, lns 3-9) stating merely "[A]nd then there has been nothing by way of declaration from them indicating why they haven't used the records that remain in their exclusive possession"

Benz and Riley requested on numerous occasions, including a request of assistance from the Town's legal counsels to facilitate, that their documents be returned to them by the Town (1269, 1515-1516). To date, the documents remain in exclusive possession of the Town. Many of the documents are irreplaceable. Replacement costs for the remainder are considerable and represented an extreme financial hardship on Benz and Riley who presently live strictly on Benz' social security income.

The simplest, most cost effective and expedient method of responding to the interrogatories as fully and completely as possible would have been for the Town to turn over the documents as requested. Benz and Riley could not fathom why the Town simply ignored their requests for the Town to turn over their documents.

Subsequently, more than two months after receiving the responses to interrogatories, Carson, without addressing any of Benz and Riley's objections contained in their responses, requested additional information, despite knowing that his client had exclusive possession of the documents, and requested a CR 26(i) conference, threatening a motion for contempt if he did not receive further responses. Benz and Riley agreed to the CR 26(i) conference and provided available dates (CP 1109-1140, Exhibit A, pg 1).

However, in the next communication, Carson stated that no such conference was necessary and gave October 10, 2014, as a deadline to provide further responses and still failing to address Benz and Riley's objections in their responses, and stated that he had information regarding settlement funds Defendant Hotel had received but were not included in the responses.

Benz and Riley replied stating responses were provided as fully as possible considering his client still had their documents, provided an explanation as to the use of the funds received over four years prior (CP 1137).

Rather than cooperate with Benz and Riley to turn their

documents, the Town elected to file, its motion for contempt, requesting sanctions and appointment of a receiver (CP 740-975), to take over the Subject Property. The Town claimed the responses provided false information and failed to provide the all information sought and still failed to address Benz and Riley's objections in their responses.

In addition to objections, Benz and Riley informed the Town that the answers would be supplemented once their documents were returned. To remember details of transactions that occurred over four years prior is an unrealistic expectation.

No supporting evidence was provided with the Town's motion showing any false information was contained in the responses.

Not only had Town failed to arrange for a return of Benz and Riley's documents, it and their legal counsel failed to even respond in any manner whatsoever to Benz and Riley's numerous requests for same.

How convenient is it that the Town refuses to return Benz and Riley's documents and then moves the court for an order of contempt and appointment of a receiver for failure to provide information over which The Town had exclusive possession and control for over a year and a half?

Prior to the hearing on the Town's contempt motion, additional declarations were filed, one from the Town's legal counsel (CP 1096-1101) and from the Town's Mayor, Tony Grider. (CP 1087-1095).

Prior FOIA requests made by Benz and Riley to the Town regarding the Town's change of the entry door lock, had received cagey, evasive, non-responsive answers, and ultimately flat denial of any public documents relating thereto (CP 1527).

Mayor Tony Grider's declaration (CP 1087-1095) then admitted that the Town had indeed changed the entry lock to the Subject Property the previous year and then launches on what can only be described as a fantasy, time travel tale as to events surrounding the Town's gaining exclusive possession and control of the Subject Property and its contents (CP 1088, ln. 3 thru 1089, ln. 19). Those events could not have happened in reality. The Mayor's statements were merely made up lies which constituted perjury.

Benz and Riley filed their response informing the trial court of the real facts, correcting numerous misrepresentations in the Town's motion, pointing out the Mayor's interesting fantasy tale and requesting that the court order the Town to turn over their documents. (CP 1109-1140).

In addition, Benz and Riley's response presented information and supporting documentation (CP 1116, ln. 5, thru 1117, ln. 16; and CP 1126-1138) discovered by Benz and Riley that confirmed their long standing suspicion of a conspiracy among numerous parties and governmental agencies in Washington and King County to acquire the Subject Property

by means other than an arm's length market condition purchase and sale transaction.

Since the filing of that response, Benz and Riley have acquired volumes of hard evidence confirming the existence of this conspiracy which will be addressed through a large, established, credible and respected international media source. This evidence will expose a conspiracy that reaches the highest levels, including King County Executive Dow Constantine, U.S. Congresswoman, Suzan DelBene, King County Council members Kathy Lambert, Rod Dembowski, and other individuals and entities.

This may well explain the extensive abuse of discretion demonstrated by the court below in ruling against Benz and Riley when clearly the facts, laws and circumstances should have led it to do otherwise. Discovery regarding this conspiracy is ongoing.

The trial court arbitrarily chose to ignore the facts and granted the contempt portion of the Town's motion, providing additional time for Benz and Riley to provide additional responses on the interrogatories and reserving on sanctions and appointment of a receiver. (CP 1146-1148).

Benz and Riley provided what additional responses could be mustered given the Town's continuing refusal to cooperate in returning their documents (CP 1158-1206). Still remaining out of the State of

Washington and without any response from the Town regarding turning over their documents, Benz and Riley attempted to the best of their ability to obtain information from banks and agencies. Some banks over the prior six years had been taken over by the FDIC. Contact was made with other banks, but without account numbers, the very information contained in the documents under the exclusive possession and control of the Town, efforts were fruitless.

Rather than cooperate with Benz and Riley to be in a position to provide the detailed information sought, the Town filed its next motion for sanctions and to adjudge Benz and Riley as vexatious litigants. (CP 1149-1251), again causing judicial waste and waste of its taxpayer purse.

In a letter dated November 3, 2014, (CP 1267) from Carson, the Town purported to offer assistance by means of clarifying some of the questions and even providing a word document to facilitate answering new questions, without any mention of turning over documents. By that time Benz and Riley had already completed the additional responses to the original questions to the extent that they could without their documents.

In response to the Town's letter, Benz and Riley once again requested the Town cooperate in turning over Benz and Riley's documents to an independent third party, specifically requesting the assistance of their legal counsel to facilitate the turnover of the documents. (CP 1269, 1515-1516). The Town remained silent.

Despite withholding Benz and Riley's documents, the Town's new motion (CP 1149-1251) asserts they are not providing enough information and seeks additional sanctions, still without addressing Benz and Riley's objections, and an order adjudging Benz and Riley to be vexatious litigants.

The incidents put forth by the Town as a 'history' of vexatious litigation falls far short of substantive findings required to achieve such a finding.

The Town's motion credits Benz and Riley with filing documents they did not file but that were filed by their defendant entities.

Yet the Town included all of the filings into one basket, regardless of who or which entity filed them, in an attempt to persuade the court that it represented a 'history' of vexatious litigation. A thorough review of the clarifications and corrections of the Town's purported 'history' of vexatious litigant behavior contained in Benz and Riley's response (CP 1252-1291) reveals an egregiously insufficient record or intent to support a finding of vexatious litigants.

Despite the Town continuing to refuse to cooperate with Benz and Riley to turn over the documents to an independent third party for verification and despite the clearly inadequate 'history' of vexatious litigation, the trial court nonetheless ignored case law and the facts and granted the Town's motion including sanctions of \$10,000 jointly and severally against Benz and Riley, and a finding of vexatious litigants requiring a pre-filing order.

At the hearing on the on the motion for sanctions and a pre-filing order and a finding of vexatious litigants against Benz and Riley, the trial court

sustained the Town's objection to Benz and Riley providing oral argument. This was a very serious motion against Benz and Riley personally for further sanctions and an order adjudging them as vexatious litigants. While Benz and Riley were allowed to 'appear telephonically' they were denied the ability to speak or present oral argument despite the court allowing Carson to present oral argument and discussion. (RP2#2, pg 3, ln. thru pg. 4, ln. 14).

This was a complete reversal of the court's previously allowing Benz and Riley to present oral argument on the prior motion for summary judgment (CP 691-700), regarding Defendant Hotel, not Benz or Riley personally, wherein the court stated that she would allow Benz and Riley oral argument (RP #1, pg 18, lns 16-19) over objection by the Town's legal counsel, and that she wanted Benz and Riley to 'have their day in court' (RP #1, pg. 43, lns. 16-17).

At the outset of the hearing on the sanctions/vexatious litigant motion, the court stated that "[I]'m considering all of the issues that are before the Court 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" (RP #2, pg. 5, lns. 11-15). Yet later in the proceeding, specifically regarding the ruling on the vexatious litigant finding, the court stated it had made its ruling "being fully apprised of the history of this case" (RP #2, pg. 23, lns. 22-25).

It was clear from the ruling, in light of the court's contradicting itself, that it did not have a full understanding of the history of the case, much less the insufficient 'history' of vexatious litigation on the part of Benz and Riley.

The orders for contempt, sanctions and vexatious litigant finding must be reversed and, as a result, the execution and sale of the Subject Property must be nullified.

ARGUMENT

A. Standard And Scope Of Review

1. Order Denying CR 60 (b)(11) Motion to Vacate.

This Court applies an abuse of discretion standard when reviewing a trial court's decision on a CR 60(b)(11) motion to vacate judgment.

Haley v. Highland, 142 W.2d 135, 156, 12 P.3d 119 (2000); In re Marriage of Jennings, 138 Wn.2d 612, 625-26, 980 P.2d 1248 (1999).

2. Order Granting Contempt Based on Insufficient Evidence.

This Court applies an abuse of discretion standard when reviewing a trial court's decision on a motion for contempt. Weiss v. Lonquist, 173 Wn. App. 344, 363, 293 P.3d 1264, review denied, 178 Wn.2d 1025 (2013).

3. Order Granting Sanctions Based on Insufficient Evidence and Absent a Finding Regarding a Material issue.

This Court applies an abuse of discretion standard when reviewing

a trial court's decision on a motion for sanctions. Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338-339, 858 P.2d 1054 (1993); Saldivar v. Momah, 145 Wn. App. 365, 402, 186 P.3d 1117 (2008).

4. Order Granting Motion to Find Vexatious Litigants Requiring a Pre-Filing Order Based on Faulty Findings of Fact.

This Court applies the substantial evidence standard when reviewing a trial court's findings of fact. In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000).

This Court reviews a trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the findings and, if so, whether the findings support the trial court's conclusions of law. Scott v. Trans-Sys., Inc., 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003). This Court reviews conclusions of law de novo. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 880 (2003).

This Court applies an abuse of discretion standard when reviewing a trial order limiting a party's access to the court. Bay v. Jensen, 147 Wn. App. 657, 196 P.3d 753 (2008).

5. Violation of Due Process.

Violation of due process is contrary to law. This Court applies a de novo standard when reviewing a trial court's violation a citizen's right of

due process. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4(2002).

B. Abuse of Discretion

At issue in some of the lower court's errors is its abuse of discretion.

Abuse of discretion occurs when a trial judge acts in an arbitrary and/or unreasonable way that results in unfairly denying a person an important right or causes an unjust result.

“An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.”

Moreman v. Butcher, 126 Wash.2d 36, 40, 891 P.2d 725 (1995).

“A decision is based ‘on untenable grounds’ or made ‘for untenable reasons’ if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.”

State v. Rohrich, 149 Wash.2d 647, 654, 71 P.3d 638 (2003) (internal quotation marks omitted) (quoting State v. Rundquist, 79 Wash.App. 786, 793, 905 P.2d 922 (1995)).

“A decision is ‘manifestly unreasonable’ if the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take,’ . . .

State v. Lewis, 115 Wash.2d 294, 298-99, 797 P.2d 922 (1990)

. . . “and arrives at a decision ‘outside the range of acceptable choices.’”

Rohrich, *Id.*(quoting Rundquist, 79 Wash.App. at 793, 905 P.2d 922).

C. Good Cause Existed for the Court to Grant Benz and Riley's CR 60(b)(11) Motion to Vacate Which Would Have Served Justice.

1. Extraordinary Circumstances

Extraordinary circumstances existed, and were augmented subsequent to the court's' ruling, sufficient for the court to have granted Benz and Riley's motion to vacate (CP 171-214).

As discussed in the motion and below, Benz and Riley's CR 60(b)(11) motion to vacate was based on extraordinary circumstances as a result of extreme and unexpected situations constituting irregularities extraneous to the proceeding, and was brought to serve justice.

CR 60(b)(11) is a catch-all provision, intended to serve the ends of justice in extreme, unexpected situations. To vacate a judgment under CR 60(b)(11), the case must involve 'extraordinary circumstances,' which constitute irregularities extraneous to the proceeding.

State v. Ward, 104 P.3d 751, 125 Wash.App. 374 (Wash.App.Div.1 (2005))

CR 60(b)(11) grants the court discretion to vacate an order *for '[a]ny other reason justifying relief from the operation of the judgment.'* (Emphasis added.)

[I]rregularities justify vacation {under CR 60(b)(11)}.
[. . .] Viewing the problem [of what constitutes irregularity] more generally it appears that *an irregularity is regarded as a more fundamental wrong, a more substantial deviation from procedure than an error of law.* An irregularity is deemed to be of such character as to justify the special remedies provided by vacation proceedings, [...]. Other than that, the most that can be said is *that it must be left for the court in each instance to classify.* (Emphasis added.)

In re Furrow, 115 Wash.App. 661, 63 P.3d 821

2. Unjust Enrichment

As a result of the denial of this motion, coupled with the granting of

judgments against Defendant Hotel (CP 1470-1471, 1536-1537, 1368-1371) totaling approximately \$189,000, the Town received judgments duplicative of the judgment against Benz and Riley personally and is now the recipient of significant unjust enrichment resulting from its acquisition of the Subject Property valued in excess of that amount to the detriment of Benz and Riley (CP 1546-1547). This duplicative judgment condition forming the basis of the unjust enrichment to the Town was alleged in Benz and Riley's opposition to the motion for entry of judgment filed by the Town on July 18, 2014 (CP 1426, ln. 2 thru 1427, ln. 14).

Significantly, Judge Linde had previously acknowledged that the judgment against Benz and Riley was duplicative in nature (CP 1471, lns. 16-21), that the Town was only entitled to the \$113,297.78 in total at that time (RP #1, pg. 30, lns 12-24) but denied their motion to vacate anyway.

Most importantly, the Town, through its legal counsel, accepted as satisfaction of all judgments the sale of the Subject Property (RP #2, pg. 24, ln. 11 thru pg. 25, ln. 1).

Not only has the Town received unjust enrichment in the form of duplicative judgments, but also in acquiring the Subject Property valued in an arms-length market condition transaction (that the Town solely caused to fail) at over \$500,000, resulting in unjust enrichment of approximately \$350,000 to the Town.

“A person has been unjustly enriched when he has profited or enriched himself at the expense of another contrary to equity. Dragt v. Dragt/DeTray, LLC, 139 Wn. App. 560, 576, 161 P.3d 473 (2007). Enrichment alone will not trigger the doctrine; the enrichment must be unjust under the circumstances as between the two parties to the transaction. Dragt, 139 Wn. App. at 576. Unjust enrichment has three elements: (1) There must be a benefit conferred on one party by another; (2) the party receiving the benefit must have an appreciation or knowledge of the benefit; and (3) the receiving party must accept or retain the benefit under circumstances that make it inequitable for the receiving party to retain the benefit without paying its value. Dragt, 139 Wn. App. at 576.”
Pierce County v. State, 185 P.3d 594, 144 Wash.App. 783 (2008)

Judge Linde’s denial of Benz and Riley’s motion to vacate was arbitrary and unreasonable and violated the appearance of fairness doctrine which resulted in a manifest injustice to Benz and Riley.

3. Precedent Set by Vacating Against Dickson

In addition, as a result of the lower court’s vacating the judgment against Dickson (CP 170), essentially reversing its earlier decision denying Dickson’s motion reconsideration of the underlying order and judgment for the CR 11 sanctions, the precedent was set for Benz and Riley to apply to the court and obtain similar justice.

Judge Spector’s precedent setting decision on the Brief in vacating the judgment against Dickson and his firm, without cause or ruling from the Appellate Court, essentially reversed her prior ruling on the motion for reconsideration of the CR 11 sanctions. Judge Spector’s unfairness violated the appearance of fairness doctrine, constituted an abuse of

discretion, and was sufficient basis on which Benz and Riley's later motion to vacate should have been granted.

Judge Linde, like her predecessor before her, abused her discretion as her denial of Benz and Riley's motion to vacate was unreasonable, was based on untenable grounds and violated the appearance of fairness doctrine resulting in a manifest injustice to Benz and Riley. The risk of manifest injustice was clearly demonstrated to Judge Linde.

“We hold that a violation of the appearance of fairness doctrine [...] does result in a judgment that may be vacated under CR 60(b)(11). To obtain relief, the moving party must demonstrate a risk of injustice to the parties if relief is not granted.”

Tatham v. Rogers, 170 Wn.App. 76, 96, 283 P.3d 583 (2012)

4. Underlying CR 11 Sanctions Proven to be Unfounded

Additionally with the ruling vacating the judgment against Dickson, the underlying CR11 judgment was confirmed as invalid as was discussed in Dickson's Brief (CP 153, ln. 25, thru 154, line 5) on which that ruling was made.

The court admitted it erred in granting the underlying CR 11 sanctions judgment (CP 210). Based on Dickson's implied CR 60(b) motion in his Brief, Judge Spector took the opportunity to vacate the Judgment against Dickson and his firm to avoid yet another adverse ruling by the Court of Appeals (after already having been found to have abused her discretion in this matter) and further used the opportunity to recuse

herself. Dickson had failed to appeal on behalf of his clients, Benz and Riley.

In admitting the court erred in granting the Judgment against Dickson, that admission of error must also carry over to vacate the CR 11 judgment against Benz and Riley if justice is to be served.

Judge Linde's denial of Benz and Riley's motion to vacate exacerbated the manifest injustice caused by Spector and further caused the potential unjust enrichment to the Town to become a reality when the Town acquired the Subject Property in payment of the judgments. (CP 1546-1547).

The circumstances herein are amply suitable for vacating this duplicative and manifestly unjust judgment pursuant to CR 60(b)(11). Judge Linde's denial to vacate was arbitrary, unreasonable, not based on facts and constitutes an abuse of discretion.

D. The Trial Court Erred in Granting Contempt and Sanctions Against Benz and Riley Absent a Finding Regarding a Material Issue and Therefore Absent Sufficient Evidence.

The Town failed to provide sufficient evidence and the court below disregarded substantial evidence in making its rulings for contempt and for sanctions. Further the court and the Town both failed to address Benz and Riley's objections contained in their responses to interrogatories, a material issue.

Contempt of Court is defined as:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings; (b) Disobedience of any lawful judgment, decree, order, or process of the court; (c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or (d) Refusal, without lawful authority, to produce a record, document, or other object.

RCW 7.21.030

Benz and Riley committed no contempt of Court and the Town provided no evidence to substantiate its spurious allegations thereof, making the later sanctions ruling unfounded. The court erred in arbitrarily and unreasonably ignoring certain facts while selectively agreeing with other facts, including clearly fabricated and impossible information provided by Mayor Tony Grider (CP 1088, ln. 3 thru 1089, ln. 19) in his attempt to relieve the Town of its responsibility for taking and refusing to return Benz and Riley's documents.

Benz and Riley complied as fully as possible with discovery requests, and made numerous reasonable objections including to the inordinate six year period covered. The Town's refusal to turn over Benz and Riley's documents to an independent third party after holding them for over a year and a half makes it culpable in Benz and Riley's inability to provide more of the information the Town sought. The court ignored these facts as well as Benz and Riley's objections.

The trial court erred in ignoring pertinent facts and selecting other dubious facts upon which to conclude that Benz and Riley failed to cure the prior contempt and to grant sanctions against them.

The trial court simply lacked sufficient evidence to make the rulings of contempt and sanctions, and failed to address Benz and Riley's objections, and thereby abused its discretion.

"Substantial evidence is the "quantum of evidence sufficient to persuade a rational fair-minded person the premise is true."
Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879,
73 P.3d 369 (2003)

Chevalier v. Woempner, Wn. App., 290 P.3d 1031 (2012)

This Court should reverse the earlier contempt order, should reverse the sanctions against Benz and Riley.

While not the subject of this appeal, the remaining question would be what to do about the Town's acquisition of the Subject Property which was based on dubious grounds and the trial court's same erroneous rulings of contempt and sanctions against Defendant Hotel.

Benz and Riley's objections to certain of the interrogatories were material to the court's finding them in contempt resulting in sanctions against them. The Town did not respond to Benz and Riley's objections, but merely stated that they sought more information, despite its being possession of Benz and Riley's documents. Instead, Carson called off the CR 26 (i) discovery

conference and filed the motion for sanctions/pre-filing order (CP 1149-1251).

The trial court made no findings regarding any of Benz and Riley's objections or the Town's failure to address them. Absent such findings, the court's conclusion that Benz and Riley were in contempt and later remained in contempt and were sanctionable lacks 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.

If no finding is entered as to a material issue, it is deemed to have been found against the party having the burden of proof. *Omni Group, Inc. v. Seattle-First Nat'l Bank*, 32 Wn.App. 22, 28, 645 P.2d 727, review denied, 97 Wn.2d 1036 (1982). *Pacesetter Real Estate, Inc. v. Fasules*, 53 Wn.App. 475, 767 P.2d 961 (1989).

It was the Town's burden to demonstrate grounds for sanctions and failed to do so in neglecting to address Benz and Riley's objections contained in their responses to interrogatories. The court also failed to address the objections in its findings, and therefore abused its discretion in finding Benz and Riley in contempt, for failing to purge that contempt and in awarding sanctions therefor.

E. The Trial Court Erred in Granting Town's Motion for a Pre-filing Order and a Finding of Benz and Riley as Vexatious Litigants as the Ruling was Contrary to Law, Contrary to the Facts and an Abuse of Discretion.

- 1. A pre-filing order is an extreme remedy, was not warranted in this matter and should not have been granted.**

A pre-filing order is an extreme remedy that should rarely be used.

“[. . .] pre-filing orders are ***an extreme remedy that should rarely be used***. DeLong v. Hennessey, 912 F.2d at 1147 (9th Cir. 1990). **Courts should not enter pre-filing orders with undue haste because such sanctions can tread on a litigant's due process right of access to the courts.** Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817 (4th Cir.2004); Moy v. United States, 906 F.2d 467, 470 (9th Cir.1990); see also Logan v. Zimmerman Brush Co., 455 U.S. 422, 429, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) (noting that the *Supreme Court “traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances”*); 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1336.3, at 698 (3d ed.2004). **A court should enter a pre-filing order constraining a litigant's scope of actions in future cases only after a cautious review of the pertinent circumstances.** (Emphasis added.)

Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1057 (9th Cir. 2007)
(interpreting 28 U.S.C. § 1651 (a)).

2. The Town’s Motion for Order Finding Benz and Riley to be Vexatious Litigants Failed to Provide an Accurate Record for Review Required for Such a Finding.

The Town’s purported ‘history’ of vexatious litigation on the part of Benz and Riley, as contained in its motion, is factually incorrect. A careful and cautious review of the record reveals Benz & Riley personally did not file ‘substantive’ actions sufficient to support the finding of vexatious litigants against them. Benz and Riley actions were purely defensive, required by the Town’s actions against them.

Actions of the defendant entities (separate and distinct from Benz and Riley) or of parties other than Benz and Riley and the defendant entities, cannot be

combined with the scarce separate actions of Benz and Riley to form any part of the required 'adequate record for review' to find against them personally.

The Town presented a laundry list of items (CP 1150, ln. 10, thru 1152, ln. 17) filed by then defendant entities' legal counsel that should not have been attributed to Benz and Riley personally, especially in light of the ruling on Dickson's Brief that substantiated many of those very documents filed by the defendant entities as bona fide and legitimate (CP 153, ln. 25, thru 154, ln. 5; and CP 170).

Also included in the Town's faulty 'history' were items that were not filed by Benz and Riley or their defendant entities, but by other parties that, despite the evidence, the court below wrongly attributed to Benz and Riley and Freedom of Information Act requests. (CP 1253, ln. 22, thru 1255, ln. 14).

Benz and Riley, personally not defendants in this case, became judgment debtors for rightfully executing documents on behalf of the defendant entities, in conjunction with those pleadings prepared by then legal counsel, which documents were later substantiated to be rightfully executed with the ruling on Dickson's Brief. (CP 170).

Benz and Riley, nor their defendant entities, filed this lawsuit. The Town ginned up the lawsuit for the sole purpose of acquiring the historic Subject Property which it has now accomplished. Benz and Riley made

numerous attempts to work with the Town to resolve issues but to no avail and never having even received any response to the many invitations to the Town to meet and work together. The Town ruthlessly pursued non-affiliated parties, namely Riley's corporation and limited liability company and Defendant Lienholder, based on unfounded theories that never panned out (CP 153, ln. 2, thru 154, ln. 12). Benz and Riley were forced to do what they could to defend themselves and exercise their rights in accessing the court. However, the minimal filings made by Benz and Riley personally are woefully insufficient to support a ruling of vexatious litigants against them. The trial court simply had insufficient evidence to make the ruling and thereby abused her discretion.

No pleadings filed by Benz and Riley as individuals have ever been found to be filed as improper or for purposes of harassment or delay nor have been stricken from the record.

Three filings by Benz and Riley, compared to Molski's hundreds of filings (on which the district courts could not agree to a finding of vexatious litigation against Molski (Molski v. Evergreen Dynasty Corp., 521 F.3d 1215 (2008 Amended)) ***constitutes no record for review*** on which the court could have based its finding for vexatious litigation on the part of Benz and Riley.

Benz and Riley have not been litigious with any party herein, much less 'highly' litigious as in the case of Molski and other similar cases.

Discussion contrasting the actions mistakenly included in the Town's supposed 'history', with the actual actions of Benz and Riley was briefed at length in their response to this motion. (CP 1253, ln. 22, thru 1255, ln. 14).

An order constraining a litigant's access in any future cases should be granted only after a 'cautious review of the pertinent circumstances'. Molski, *Id.*

The court failed to make the required cautious review and instead, ignored the facts, and arbitrarily and recklessly granted the motion for a pre-filing order based on insufficient, virtually non-existent record to support such a finding. As a result, the court maliciously and intentionally violated Benz and Riley's constitutionally guaranteed right to petition the government for a redress of grievances.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and **to petition the government for a redress of grievances.** (Emphasis added.)

U.S. Constitution, Amendment I

While the lower court's order on this motion found "[T]he Court finds that the record is full of substantive findings as to the frivolous and harassing nature of the litigants actions..." on the part of Benz and Riley, it does not make the Town's faulty history true.

The lower court's Findings of Fact were faulty and as a result, the court abused its discretion in making those findings and concluding that Benz and Riley were

vexatious litigants. There simply was no evidence to support the lower court's findings of fact. Chevalier, *Id.*

A careful and cautious review of the record reveals to a rational and fair minded person that substantial evidence did not exist to rule Benz and Riley vexatious litigants.

Benz and Riley did not file this lawsuit. On numerous occasions they attempted to work with the Town to resolve issues with no response whatsoever from the Town other than for the Town to file its lawsuit. The Town's viciously pursued Benz and, wrongfully, Riley's entities; wrongfully served and pursued Defendant Lienholder on bogus invented theories. Attempts at defending their entities and then themselves when they wrongfully became judgment debtors and otherwise exercising their rights cannot be held to represent vexatious litigation.

Substantial evidence did not exist to support the court's findings of fact or its conclusions in finding Benz and Riley to be vexatious litigants.

F. The Trial Court Deprived Benz and Riley's Due Process When It Refused to Allow Their Oral Argument and Demonstrated Bias While Granting Town Oral Argument.

The U.S. Supreme Court has long held that the right to be heard prior to deprivation of life, liberty or property is a fundamental right protected under the due process clauses of the U.S. Constitution.

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.”

U.S. Constitution, Amendment XIV, Section 1

While the Supreme Court has attempted to clearly define the rights guaranteed under the due process clause, there is no clear definition. There is however substantive case law supporting the minimal fundamental rights included, the most basic of which are the right to a hearing with the opportunity to be heard, before an unbiased and impartial tribunal.

“Some form of hearing is required before an individual is finally deprived of a property [or liberty] interest.”

Mathews v. Eldridge, 424 U.S. 319, 333 (1976)

“Parties whose rights are to be affected **are entitled to be heard.**” (Emphasis added.)

Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1863)

The courts are duty bound to ensure these rights of hearing are fair.

“The right of hearing is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment ...”

Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972). See Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170-71 (1951) (Justice Frankfurter concurring)

Equally important, that hearing must be held before an unbiased and impartial tribunal, which must also present, at the very least, the *appearance* of the absence of bias and partiality.

One of the guiding principles of the American system of jurisprudence is the idea of an independent and neutral judiciary and is a fundamental requirement of due process.

Washington's appearance of fairness doctrine not only requires a judge to be impartial, it also requires that the judge appear to be impartial.

State v. Finch, 137 Wn.2d 792, 808, 975 P.2d 967 (1999)

Additionally, due process and Washington's Code of Judicial Conduct further mandate judges should not merely be impartial and unbiased, but go above and beyond to ensure there is no appearance of impropriety or bias.

[1] **An independent, fair and impartial judiciary is indispensable to our system of justice.** The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that **judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.** (Emphasis added.)

[2] **Judges should** maintain the dignity of judicial office at all times, and **avoid both impropriety and the appearance of impropriety** in their professional and personal lives. **They should aspire at all times to conduct that ensures the**

greatest possible public confidence in their independence, impartiality, integrity, and competence. (Emphasis added.)
Washington Code of Judicial Conduct, Preamble

[4] Second, the Comments identify aspirational goals for judges. **To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules**, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office. (Emphasis added.)

Washington Code of Judicial Conduct, Scope

The court below had previously ruled to find Benz and Riley in contempt without taking into account all the facts of the case, specifically that the Town was in exclusive possession of the very documents containing the information it was requesting from Benz and Riley, and the creatively spun fantasy story by the Town's mayor regarding its taking possession of Benz and Riley's documents.

At the later hearing for sanctions, the court below again disregarded the same pertinent facts, in addition to denying Benz and Riley the opportunity to be heard, clearly demonstrating bias and prejudice against them in addition to denial of due process.

A reasonable person knowing and understanding all the facts would likewise question the trial court's lack of impartiality and bias under these circumstances.

At the January 2, 2015 hearing on the Town's motion for sanctions and for a pre-filing order, the court below allowed the Town oral argument

while granting the Town's objection to allow Benz and Riley to present oral argument (RP #2, pg. 4, lns 3 thru 15).

The court had earlier granted Benz and Riley oral argument under similar circumstances and over similar objection by the Town because, as the court stated, it wanted to ensure they 'have their day in court' (RP #1, pg. 18, lns. 13 thru 19). That earlier hearing was for summary judgment (heard October 31, 2014) against Benz and Riley's defendant entities having nothing to do with their personal property or a pre-filing order.

Yet on a motion that was critically important with regard to Benz and Riley's property and their freedom to access the courts (heard January 2, 2015), the court below arbitrarily and capriciously denied their opportunity to be heard and thereby violated their right to due process.

Due process is meant to protect parties from the mistaken or unjustified deprivation of life, liberty or property. In this case, the sanctions and vexatious litigant rulings were substantively unfair and unjustified as discussed above.

"[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."
Carey v. Piphus, 435 U.S. 247, 259 (1978).

The required fundamental elements of due process are therefore those which minimize unfair or mistaken deprivations by

allowing the party, upon which a court proposes to deprive of property, to contest in order to "minimize substantively unfair or mistaken deprivations". See Carey, Id.

By arbitrarily denying Benz and Riley the opportunity for oral argument while allowing the same from the Town, the court below denied Benz and Riley the ability to contest the basis upon which it might make its ruling.

Chief Justice William Howard Taft, delivering the opinion of the Court, explained the purpose of the due process clauses.

“The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Hurtado v. California, 110 U.S. 516, 535, 4 S. Sup. Ct. 111. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the Congress or the Legislature may not withhold.” (Emphasis added.)
Truax v. Corrigan, 257 U.S. 312, 332 (1921)

Deprivation of a party's right to access the judicial system without the requirement of a pre-filing order must be included as a basic liberty protected by the due process clause.

The U.S. Supreme Court has sought to clarify the meaning of the term “liberty,” though the term has never had a precise definition.

The Supreme Court stated that liberty “denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience and **generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness of free men.**” (Emphasis added.)

Meyer v. Nebraska, 262 U. S. 399 (1923)

The court below denied Benz and Riley’s due process and demonstrated extreme bias in denying their most basic and fundamental rights guaranteed by due process protection when it denied them oral argument to defend their property and against being found as vexatious litigants.

CONCLUSION

Based on the foregoing, Benz and Ms. Riley respectfully request that this Court reverse the October 31, 2014 order denying the vacation of the judgment against them and also reverse the January 2, 2015 order of contempt, granting additional sanctions and adjudging Mr. Benz and Ms. Riley vexatious litigants requiring a pre-filing order.

Respectfully submitted this 13th day of July, 2015.


Karl Benz, Appellant pro se


Catherine Riley, Appellant pro se