

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

Date of Hearing: Thursday, March 15, 2012
Location: Spokane, 500 North Cedar Street

9:00 a.m.

- 1) **No.: 29550-8-III**
Case Name: Scott Young v. Robert Frank
County: Spokane

Case Summary: Scott and Gaylene Young contacted Bob Frank Construction, LLC about construction of a custom home. The parties signed an agreement reserving a vacant lot while Bob Frank developed a house plan and estimated a price for the project. Eventually Bob Frank presented a “custom construction proposal” that stated that the “bid” for the land and construction was \$1,040,600. The Youngs signed the proposal, paid a \$50,000 deposit, and construction began. Later, an appraisal determined that the home’s value was only \$850,000. The Youngs refused to buy the home and filed a complaint seeking the return of their deposit. Bob Frank counterclaimed for specific performance of the lot reservation agreement, which it considered a real estate purchase and sale agreement. Alternatively, Bob Frank sought quantum meruit and unjust enrichment damages. The trial court found that there was no mutual assent to the essential terms of a contract for the sale of real estate, but awarded Bob Frank damages under promissory estoppel. Both parties appeal.

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- 2) **No.: 29971-6-III**
Case Name: M. Stanley Sloan v. Horizon Credit Union
County: Spokane

Case Summary: The Spokane County superior court entered judgment for Horizon Credit Union against M. Stanley Sloan and sanctioned Mr. Sloan and his attorney, Dennis Clayton, \$14,950 for filing a frivolous lawsuit. Another attorney, Howard Herman, agreed to pay the sanction for Mr. Sloan and Mr. Clayton while the decision was appealed. Mr. Clayton promised to repay Mr. Herman if the judgment was not reversed on appeal. Mr. Herman then paid Horizon the sanction amount and Horizon executed a satisfaction of judgment. Horizon also gave an assignment of the judgment to Mr. Herman. After this court later reversed the sanction judgment on appeal, Horizon refused to refund the judgment monies to Mr. Herman. Mr. Clayton gave Mr. Herman a promissory note for the amount of the sanction and moved for an order requiring Horizon to refund the judgment monies. The superior court denied Mr. Clayton's motion and he and Mr. Sloan appeal.

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- 3) **No.: 28640-1-III**
Case Name: Jamie Ruff v. Dennis A. Knickerbocker
County: Spokane

Case Summary: Jamie Ruff and Dennis Knickerbocker are the parents of K.R. In 2002, a Montana court entered a temporary parenting plan that was to remain in effect as long as Ms. Ruff lived in Shelby, Montana. One year later, Ms. Ruff and K.R. moved to Washington. In 2008, both parents filed petitions in the Spokane County superior court for a parenting plan and residential schedule. The Spokane court found that it had emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act and entered temporary orders. Subsequently, the Montana court dismissed its custody case at the request of both parents, and the Spokane court then entered a parenting plan and residential schedule. Mr. Knickerbocker appeals.

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- 4) **No.: 29975-9-III**

Case Name: Trinity Universal Insurance Co. of Kansas v. Corrine Cook

County: Spokane

Case Summary: Corrine Cook and her children rented an apartment in a multi-unit complex in Spokane. Her husband, Christopher Cook, frequently visited the apartment while he lived in a half-way house after his release from prison. One day, Mr. Cook visited the apartment while his family was away and he discarded a cigarette butt in a pail on the balcony. Later, the pail ignited and started a fire that caused almost \$1 million in damage to the complex. The landlord's insurer, Trinity Universal Insurance Company of Kansas, paid to repair the damage and then filed subrogation claims against Mr. and Ms. Cook for reimbursement. The superior court summarily dismissed the claims. Trinity appeals.

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11:00 a.m.

5) **No.: 30422-1-III**

Case Name: Robert Catsiff v. Tim McCarty and City of Walla Walla

County: Walla Walla

Case Summary: The City of Walla Walla had wall sign regulations establishing size and height limits for commercial signs in its downtown area. Robert Catsiff opened the Inland Octopus toy store in downtown Walla Walla. Shortly thereafter, he painted wall signs on the front and the back of his store building. The City manager sent Mr. Catsiff a notice of civil violations of the wall sign size and height limits and of the permit requirements. Mr. Catsiff contested the constitutionality of the sign regulations. The City's hearing examiner ruled that Mr. Catsiff had violated valid regulations and the superior court affirmed this decision. Mr. Catsiff appeals.

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6) **No.: 29878-7-III**

Case Name: Delores Weaver v. Spokane County

County: Pend Oreille

Case Summary: Late one night, Spokane County Deputy Marc Melville saw Duane Weaver stumble off a snow berm and walk on Division Street, a busy four-lane arterial in Spokane. The deputy stopped Mr. Weaver, noticed he was intoxicated, and told him to stay off Division or at least to walk facing traffic. Mr. Weaver left the arterial and headed east. Over an hour later, a drunk driver struck Mr. Weaver, who was walking on Division facing traffic. Mr. Weaver later died from his injuries. The personal representative of his estate sued Spokane County for negligence, claiming that Deputy Melville failed to take corrective action although he knew Mr. Weaver was at least gravely disabled by alcohol. Spokane County moved for summary judgment, arguing that the public duty doctrine barred the estate's suit. The Pend Oreille County superior court granted Spokane County's motion, dismissing the action, and the estate appeals.

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7) **No.: 29818-3-III**

Case Name: Caryl J. Clifton v. Linda Ross, Personal Representative of Estate of Walter D. Johnson, Sr.

County: Walla Walla

Case Summary: Caryl Clifton bought a portion of the neighboring property owned by Walter Johnson, Sr. To correct a survey error, Mr. Johnson later gave Mr. Clifton a quitclaim deed for an additional strip of land between their properties. Mr. Clifton failed to record the deed. 30 years later, Mr. Johnson deeded some of his property to a developer, Majerus Construction, Inc. The boundary line of one of Majerus's developed lots overlapped the strip conveyed to Mr. Clifton by quitclaim deed. Noticing that he had not recorded the deed, Mr. Clifton then recorded it. Majerus sued Mr. Clifton and Mr. Johnson for slander of title and breach of statutory warranties. Mr. Johnson settled with Majerus and the trial court entered judgment against Mr. Clifton, awarding Majerus damages for slander of title. This court affirmed. Over three years after discovering Majerus's overlapping boundary line, Mr. Clifton filed a creditor's claim against the estate of Mr. Johnson. The estate rejected the claim and Mr. Clifton sued the estate. His claims of equitable indemnity, conversion, unjust enrichment, contribution, and constructive trust were dismissed on summary judgment. Mr. Clifton appeals.

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8) **No.: 29595-8-III**

Case Name: State of Washington v. Miguel Cervantes Valdovines

County: Franklin

Case Summary: In 1987, Miguel Gomez Cervantes (a.k.a. Miguel Cervantes Valdovines) pleaded guilty to unlawful possession of cocaine and he was sentenced to 90 days of confinement. At the time Mr. Gomez pleaded guilty, he was not a United States citizen. The conviction was vacated in 2005 because Mr. Gomez had fulfilled all of the requirements of the sentence and had been discharged. Vacation of the judgment and sentence did not alleviate the immigration consequences of the conviction, and he currently is awaiting deportation. In 2010, Mr. Gomez again moved to vacate the 1987 conviction, claiming his plea was involuntary because his attorney failed to inform him of the immigration consequences. The superior court denied Mr. Gomez's motion on the ground that the judgment and sentence had already been vacated. He appeals.

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