

FILED
SUPREME COURT
STATE OF WASHINGTON
2/16/2022 2:04 PM
BY ERIN L. LENNON
CLERK

No. 100456-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DOMINICK BYRD,

Petitioner,

v.

ALETTA HORTON and MBK HOUSING, LLC,

Respondents,

and

RICHARD SIMPSON, an attorney,

Petitioner.

**RESPONDENTS' ANSWER TO
PETITION FOR REVIEW**

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I. IDENTITY OF RESPONDENT

Aletta Horton and MBK Housing, LLC were the defendants at the trial court level and respondents in the Court of Appeals, Division Two.

II. ISSUES PRESENTED FOR REVIEW

Petitioners, Dominick Byrd and his attorney, Richard Simpson (referred to collectively as “Petitioners”)¹, identified four issues for review. Respondents, Aletta Horton and MBK Housing, LLC (“Respondents”) move this Court to deny the Petition for Review in its entirety. The Appellate Court’s decision does not conflict with any decision of the Supreme Court or published decision of the Court of Appeals. See RAP 13.4(b). It does not

¹The Appellate Court Order Dismissing the underlying appeal notes that when an attorney is sanctioned by the trial court, they become a party to the action and may appeal the sanction as an aggrieved party. App. 3-5. Attorney Simpson therefore became a party to the action when he was sanctioned by the trial court and he personally appeals the Order finding him in contempt of court making him at least a joint petitioner with Mr. Byrd here, if not the only petitioner considering the order finding him in contempt is the only order actually at issue.

involve a significant question of law under the Washington or United States Constitution and there is no issue of substantial public interest. See RAP 13.4(b). Petitioners do not even cite to RAP 13.4(b) which identifies specific potential grounds for acceptance of review by the Supreme Court.

None of Petitioners' four stated, "Issues for Review" were before the Appellate Court and thus they are not appropriately before this Court either. The appeal at issue was strictly related to an order finding Mr. Byrd's attorney, Mr. Simpson, in contempt of court for his refusal to pay \$30,000 in sanctions that had been issued against him due to his behavior in the trial court. App. 1-2² (Notice of Discretionary Review).

This Court need look no further than the Appellate Court's decision dismissing Petitioners' appeal, which

² An Appendix of relevant documents is attached hereto and labelled Appendix 0001-00052. The Appendix will be cited to as (App. 1 – 52).

affirms that the appeal was strictly related to a show cause order against Mr. Simpson: “Simpson appeals the court’s contempt order and the underlying sanctions.” App. at 3-5 (Decision Dismissing Appeal). In addressing the fact Mr. Simpson was attempting to use the appeal of the contempt order to re-appeal orders he previously appealed on behalf of Mr. Byrd the Appellate Court states, “Furthermore, Simpson provides no argument why a contempt order against Simpson is grounds for Byrd to circumvent our previous dismissal of Byrd’s appeal with prejudice.” *Id.*

The Appellate Court properly dismissed Petitioners’ Appeal as Petitioners’ Opening Brief, (much like the present Petition for Review) did not cite to the case record and did not contain any coherent argument or legal authority regarding the show cause order actually being appealed: “Simpson fails to provide this court with *any* argument in his opening brief regarding the sanctions or

the contempt order, and Simpson fails to provide any citations to the record or to legal authority.” *Id.*

III. STATEMENT OF THE CASE

A. Background.

The underlying matter arises from a house fire that occurred in Tacoma, Washington on October 18, 2017. App. 6-14. (Plaintiff’s Complaint). At the time of the fire the house had six residents, including appellant, Dominick Byrd. *Id.* Mr. Byrd’s lawsuit included claims for personal injury arising from the fire against Ms. Aletta Horton and MBK Housing, LLC. *Id.* Ms. Horton is the sole member of MBK Housing, which is uninsured and holds no assets. App. 15-17. (Declaration of Aletta Horton, March 6, 2019). MBK Housing, LLC has never owned the home at issue. *Id.*

Petitioners’ “Statement of the Case” is largely fiction and as such does not include required citation to the record. However, as admitted by Petitioners at page 6 of

their motion, less than six months after Mr. Byrd had filed his Complaint, Respondents, through their insurer, agreed to pay Respondents' insurance policy limits to settle Mr. Byrd's lawsuit. *See Petitioners' Motion at page 6.* The agreement was made despite the fact the cause of the fire was never discovered, Petitioners' assertion that, "By all reasonable inferences the fire originated at an electrical outlet in a vacant room..." is unsubstantiated. *See Petitioners' Motion at page 3.*

At Mr. Simpson's request, an in-person meeting was set for March 1, 2019 to finalize the settlement documents and provide the settlement check. App. 18-30 (Motion to Enforce Settlement). Despite the fact Mr. Byrd signed the Settlement Agreement agreeing to dismiss his lawsuit in exchange for Respondents \$500,000 insurance policy limits, in the presence of and with the advice of his attorney, Mr. Simpson, Mr. Byrd and Mr. Simpson later disputed the validity of the settlement agreement. *Id.* The

dispute eventually resulted in a trial court order enforcing the settlement and awarding Respondents \$5,000 in sanctions against Mr. Simpson for his conduct. App. 31-34 (Trial Court Order Enforcing Settlement and Awarding Sanctions). The trial court matter was then dismissed via a stipulation and order for dismissal signed by counsel and the trial court judge. App. 35-36 (Stipulation and Order of Dismissal).

B. Mr. Byrd's First Appeal.

Mr. Byrd previously appealed the trial court order enforcing the parties' settlement agreement and requiring Mr. Simpson to pay Respondents \$5,000 in sanctions via a Notice of Appeal filed on April 18, 2019. App. 37-38 (Notice of Appeal). The earlier appeal was dismissed by the Appellate Court, with prejudice, due to Mr. Byrd's failure to comply with a trial court order requiring that he obtain a bond, or deposit in the court registry, the \$500,000 in settlement monies he elected to

keep if he wished to continue pursuing an appeal of the validity of the parties' agreement to settle for Respondents' insurance policy limits. App. 39-40 (Ruling from COA, September 23, 2019).

C. Horton Pursues Payment of the Unpaid Sanctions.

Following receipt of the Appellate Court's September 23, 2019 order dismissing Mr. Byrd's first appeal, Respondents, through counsel, began pursuing payment of the unpaid sanctions awarded by the trial court against attorney, Mr. Simpson, based on Mr. Simpson's conduct in the underlying matter related to the settlement and related to his promises regarding the location of the settlement money and his ability to work with his client to secure a bond or deposit the settlement money in the court registry. App. 41-45 (order awarding \$25,000 in sanctions related to deficient bond); App. 46-51 (Defendants' Motion for Order to Show Cause).

///

Ultimately, Mr. Simpson appeared on December 13, 2019 for a show cause hearing. App. 52. (Show Cause Order). At that hearing the trial court issued an order finding Mr. Simpson in contempt of the court's orders awarding sanctions against him in the amounts of \$5,000 and \$25,000 due to his refusal to pay the sanctions. *Id.* The trial court gave Mr. Simpson approximately one month to cure and comply with the earlier trial court orders or remedial sanctions of an additional \$2,000/day would begin to accrue. *Id.* The trial court gave Mr. Simpson approximately two months to cure or a bench warrant was to be issued for Mr. Simpson's arrest. *Id.*

On January 2, 2020, Petitioners filed the Notice of Discretionary Review at issue in the underlying appeal asking this court to review the trial court's December 13, 2019 Order on the Show Cause Hearing. App. 1-2. (Notice of Discretionary Review). No other orders were appealed and in fact, appeal of any other orders,

including the orders actually awarding sanctions against Mr. Simpson, would not have been timely. *Id.*

IV. ARGUMENT

The Petition for Review should be denied as Petitioners fail to comply with the basic rules of appellate procedure here at the Supreme Court level just as they did at the Appellate Court level. Pursuant to RAP 13.4(b):

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Petitioners' Motion for Review does not even cite to RAP 13.4(b) let alone address the applicability of any of the specified grounds for review to this request for review.

///

There is no valid basis for review of the Appellate Court decision terminating review. The Appellate Court appropriately dismissed Petitioners' appeal, foremost, because there was not even a coherent argument included in Petitioners' Opening Brief with regard to what was actually being appealed. Mr. Simpson, on behalf of his client, filed an Opening Brief wherein he spent fifty pages arguing about issues that were not part of the appeal and thus the appeal was appropriately terminated. The Appellate Court held that the Contempt Order against Mr. Simpson issued in December 2019 was not grounds for his client, Mr. Byrd, to re-litigate the underlying matter or re-file his earlier appeal.

The appeal was further correctly dismissed as Petitioners failed to cite to the court record in their opening brief. Exactly as is the case here, the Opening Brief was rife with Attorney Simpson's opinions and best recollections rather than containing even a single citation

to the record.

The Appellate Court's decision dismissing Mr. Simpson's appeal of the show cause order finding him in contempt of court for his refusal to pay \$30,000 in sanctions issued against him due to his behavior at the trial court level was appropriate in all respects.

V. CONCLUSION

Respondents respectfully request an order denying Petitioners' Request for Review. There is no valid basis for Supreme Court review of the Appellate Court's decision. The Appellate Court rightly concluded that Mr. Simpson had provided no relevant argument and further that he failed to follow the procedural rules of the court such as by citing to the record. Pursuant to RAP 13.4(b) there are no grounds justifying review of the Appellate Court decision.

///

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I certify that this document contains 1,712 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 17th day of February, 2022.

PREG O'DONNELL & GILLET
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APPENDIX

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|-----|---|-----------|
| 1. | Notice of Discretionary Review to the Court of Appeals | App-1-2 |
| 2. | Unpublished Opinion Dismissing Appeal | App-3-5 |
| 3. | Plaintiff's Complaint for Damages | App-6-14 |
| 4. | Declaration of Aletta Horton in Support of Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions | App-15-17 |
| 5. | Motion to Enforce Settlement Agreement and for CR 11 Sanctions | App-18-30 |
| 6. | Order Granting Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions | App-31-34 |
| 7. | Stipulation and Order of Dismissal with Prejudice | App-35-36 |
| 8. | Notice of Appeal to Court of Appeals | App-37-38 |
| 9. | Ruling Dismissing Appeal | App-39-40 |
| 10. | Order Granting Defendants' Motion for Sanctions Regarding Deficient Bond and June 21, 2019 Hearing | App-41-45 |

11. Defendants' Motion for Order to Show Cause Re: Why Plaintiff's Attorney Richard Simpson Should not be Adjudged in Contempt of Court and Remedial Sanctions Ordered and Motion for Contempt App-46-51
12. Show Cause Order App-52

1 Notice of Discretionary Review
2 (Trial Court Decision)
3 [Rule 2.3(b)]

4 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

5 Dominick BYRD, an individual,) No.: 18-2-11302-0
6)
7 Plaintiff,)
8)
9 v.) NOTICE OF DISCRETIONARY
10) REVIEW TO THE COURT
11 Aletta HORTON, an individual,) OF APPEALS
12)
13 and MBK HOUSING LLC, a)
14 Washington State Limited)
15 Liability Company,)
16)
17 Defendant(s).)

18 Richard Simpson, attorney for the plaintiff in the above-
19 referenced matter, seeks discretionary review by the
20 designated appellate court of the trial judge's decision on
21 December 13, 2019 finding the plaintiff's lawyer in
22 contempt of court, and requiring plaintiff's law firm to
23 issue a check in the amount of \$30,000 in sanctions payable
24 to opposing counsel within thirty [30] days or else face an
25 arrest warrant in a civil matter. Plaintiff's attorney
seeks to appeal the original orders as abuse of discretion.

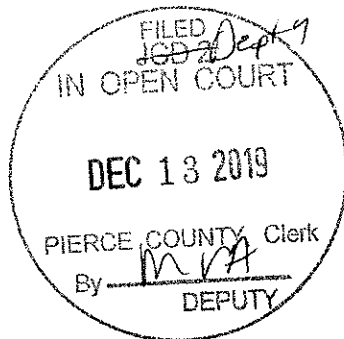
January 2, 2020



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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s) ,

vs.

ALETTA HORTON,

Defendant(s)

Cause No: 18-2-11302-0

SHOW CAUSE ORDER

(OR)

This matter having come before the Court on December 13, 2019 for attorney Richard Simpson to show cause why he should not be held in contempt the Court having heard oral argument of counsel, it is hereby ordered that attorney Richard Simpson is in contempt of the Court's orders regarding sanctions against him in the amounts of \$5,000 and \$25,000. Mr. Simpson shall pay those sanctions by January 12, 2020. If he fails to do so, remedial sanctions of \$2,000 per day will accrue until full payment is made. If payment is not made by February 11, 2020, a bench warrant will issue for Mr. Simpson's arrest.

DATED this 13th day of December, 2019.

JUDGE EDMUND MURPHY

Pretext reserved for appeal and/or discretionary review

Attorney for Plaintiff WSBA# _____

Attorney for Defendant WSBA# 210915

November 9, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DOMINICK BYRD,

Appellant,

v.

ALETTA HORTON and MBK HOUSING,
LLC,

Respondents,

and

RICHARD SIMPSON, an attorney,

Appellant.

No. 54347-8-II

UNPUBLISHED OPINION

CRUSER, J. – Dominick Byrd brought a negligence suit against his landlord, Aletta Horton, and MBK Housing, LLC. Eventually, the case settled. Following the settlement agreement, Byrd challenged the settlement; the trial court compelled the settlement and dismissed the case. Byrd appealed, and his appeal was dismissed with prejudice. Ruling Dismissing Appeal, *Byrd v. Horton*, No. 53216-6-II, at 2 (Wash. Ct. App. Sept. 23, 2019).

The trial court also sanctioned Byrd’s attorney, Richard Simpson, multiple times for his conduct during Byrd’s case. Simpson refused to pay the sanctions, and the trial court held that

Simpson was in contempt of court. Simpson appeals the court’s contempt order and the underlying sanctions.¹

We decline to consider Simpson’s appeal.

RAP 10.3

Simpson asserts that the trial court erred in imposing sanctions against him and holding him in contempt of court.²

RAP 10.3(a)(6) directs each party to supply in its brief, “argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.” Furthermore, “[p]assing treatment of an issue or lack of reasoned argument” does not merit our consideration. *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998). Simpson fails to provide this court with *any* argument in his opening brief regarding the sanctions or the contempt order, and Simpson fails to provide any citations to the record or to legal authority.³

¹ When a lawyer is sanctioned by the trial court, the lawyer becomes a party to the action and may appeal the sanction as an aggrieved party. *Breda v. B.P.O. Elks Lake City 1800 So-620*, 120 Wn. App. 351, 353, 90 P.3d 1079 (2004).

² Simpson also suggests that the sanctions may be enforceable against Byrd or could result in an economic loss to Byrd. The trial court was very clear in its orders that both sanctions are against *Simpson only*. Byrd is not responsible for paying the sanctions against Simpson.

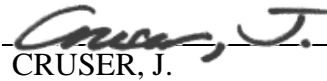
³ In his reply brief, Simpson addresses the sanctions and contempt order, but he still fails to meet the requirements of RAP 10.3(a)(6) because he does not provide any citations to the record or legal authority. Furthermore, we do not consider arguments made for the first time in a reply brief. *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App 52, 78 n.20, 322 P.3d 6 (2014).

Therefore, we decline to consider whether the trial court erred in imposing sanctions or in holding Simpson in contempt of court.⁴

CONCLUSION

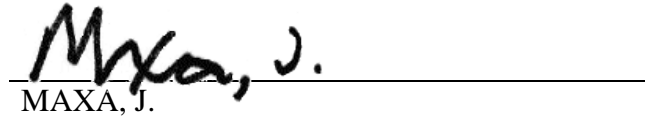
We dismiss this appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

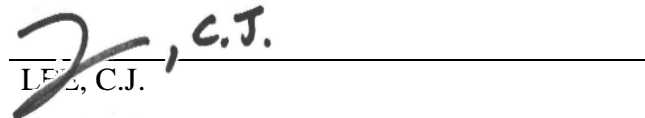


CRUSER, J.

We concur:



MAXA, J.



LEE, C.J.

⁴ In his brief, Simpson raises multiple issues on Byrd’s behalf that we decline to consider because those arguments are not properly before this court. The notice of appeal in this case is limited to the orders imposing sanctions, and the contempt order, against *Simpson*. This appeal has nothing to do with Mr. Byrd or his underlying tort action. Nor could Byrd have appealed the contempt order because he was not aggrieved by the court’s contempt order. RAP 3.1; *Breda*, 120 Wn. App. at 353. Furthermore, Simpson provides no argument why a contempt order against Simpson is grounds for Byrd to circumvent our previous dismissal of Byrd’s appeal with prejudice. *Elliot Bay Adjustment Co., Inc. v. Dacumos*, 200 Wn. App. 208, 213, 401 P.3d 473 (2017) (“A dismissal with prejudice constitutes a final judgment on the merits.”).

September 13 2018 10:58 AM

KEVIN STOCK
COUNTY CLERK
NO: 18-2-11302-0

1
2
3
4
5 **SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY**

6 BYRD, Dominick, Plaintiff,

7 v.

8 HORTON, Aletta, Defendant,
9 MBK Housing LLC, Defendant.

10 No.

11 September 13, 2018.

12 Complaint for Damages

13
14 COMES NOW Dominick Byrd, Plaintiff, by and through his attorney, Richard M.
15 Simpson, respectfully files his complaint for damages against this Defendant in a manner
16 as follows:

17 **I. PARTIES**

- 18 1.1 Dominick Byrd, Plaintiff is over the age of 18 years and an individual and
19 resident of Tacoma, Washington.
- 20 1.2 Aletta Horton, Defendant is over the age of 18 years and an individual and
21 resident of Tacoma, Washington.

22 **II. JURISDICTION AND VENUE**

- 23 1. The Court has jurisdiction of the subject matter and parties herein.
- 24 2. Venue of this matter properly lies in Pierce County, the site of the alleged tortious
25 acts.

1 **III. FACTS GIVING RISE TO LIABILITY**

- 2 1. Dominick Byrd was injured in a house fire while living as a tenant inside Aletta
3 Horton’s house on 1020 South Sprague Avenue, Tacoma, Washington, 98405 on
4 October 18, 2017 sometime around midnight (12:00 a.m.). Plaintiff had been a tenant
5 in this house for approximately three years.
- 6 2. Mr. Dominick Byrd, a 50-year old male at the time, was sleeping restfully in the
7 room that he rented upstairs, on the second floor of the house. The house, as
8 described by the fire investigator called to the scene, is a “half-way residential home”
9 and “structure used as a boarding home for released convicts”. Additionally, the
10 Tacoma Fire and Incident report listed the building as “a halfway home for released
11 and probation prisoners”.
- 12 3. Also according to the fire investigation report, the home was built in 1910, in below
13 fair condition, and six residents were living in the home at the time of the fire. On the
14 second floor were three bedrooms. One of the three bedrooms was vacant, one was
15 occupied by two other tenants, and the third bedroom was occupied by the Plaintiff.
16 While the fire originated in the vacant room on the second level, there was fire and
17 smoke damage to the entire second floor.
- 18 4. Although the home is listed as a 3 bedroom, 2 bath with basement, the home had
19 been renovated and two additional bedrooms were added on the first floor.
- 20 5. According to the fire investigation report, from interviews conducted immediately
21 following the fire, another occupant Mr. J. Lawson stated that he had entered the
22 unlocked vacant bedroom earlier in the day to put some personal items in the room.
23 No tenant occupied the room at the time of the fire. Two mattresses were in the room,
24 according to the fire investigator’s report.
- 25 6. Mr. M. Schoonover, the then ‘resident manager’ residing in the home in a bedroom
located on the first floor, reported to the inspector that the bedroom of origin was not
occupied.
7. Mr. Lawson reported that he was outside on the porch of the home with his girlfriend,
Ms. K. Kristrom, when he heard the upstairs hallway smoke detector activate, but
ignored it initially due to the sensitivity of the alarm and its frequent activation. Ms.
Kristrom offered no further comments.
8. Another occupant of the home, a Mr. D. Edwards, stated to the investigator that he
heard the hallway smoke detector go off, but waved it clear so that it would stop
beeping.

- 1 9. It wasn't until Mr. Lawson opened the door to the vacant room and saw fire rolling
2 up the curtains and atop the mattresses laying on the floor that he called out "Fire!" to
3 warn the other tenants.
- 4 10. The sole hallway alarm activated again but Mr. Byrd was unable to hear the alarm.
5 He heard people yelling from outside and then awoke to leave. Unfortunately for Mr.
6 Byrd, due to the single, old, crank-style window that was in his room at the time, the
7 only feasible way out of this emergency situation was down the stairs, through the
8 danger, where he was severely burned.
- 9 11. Several residents such as Mr. Lawson had access to the vacant room, and other
10 people used it for various purposes as it remained unlocked and accessible.
- 11 12. According to the Fire Narration from the Tacoma Fire Department report, the fire
12 department speculated that the fire could have been started by a candle or lit cigarette
13 butt within that room. Most of the people living in that home were regular smokers.
- 14 13. The Tacoma Fire Department's Fire Report classified the general cause of ignition as
15 negligence for lack of proper caution or attention.
- 16 14. According to the fire inspector's report, there was no cover box around the electrical
17 panel located in a cluttered basement and the breakers were exposed.
- 18 15. The fire inspector also noted that there was a lot of burned debris on the open floor
19 within the vacant room where the fire originated, but those items were burned beyond
20 his ability to recognize what those items were.
- 21 16. Aletta Horton was at all relevant times the landlord for this transitional/halfway
22 house.
- 23 17. Defendant Horton serves as both registered agent and governor to MBK Housing
24 LLC, UBI Number 603 069 725 with active business status, with a street address of
25 1018 S Sprague Ave, Tacoma, WA, 98405-3012, UNITED STATES. This is the house
immediately next door to the halfway house where the fire occurred.
18. Defendant Horton and MBK Housing LLC possesses a Tacoma Business License
(License Number 500027276) with a NAICS Code of 531110. This NAICS
Description is "Lessors of Residential Buildings and Dwellings." This description
includes a variety (at least 19) of corresponding index entries relating to different
types of rental and leasing structures.
19. A second business, DL Construction NW (Tacoma Business License #500136435),
also operates from 1018 S Sprague Ave, Tacoma, WA, 98405-3012, and has operated

1 since February 14, 2018. Defendant Horton's father has been observed on several
2 occasions directing and/or assisting with the remodel of the house following the fire.

3 20. According to Robert J. Story, the Housing Program Administrator with the
4 Washington State Department of Corrections, in his pamphlet to prospective housing
5 vendors, the following criteria must be met by transitional housing vendors who
6 choose to operate this type of business. In his words, "the department does expect the
7 companies or organizations who provide services to their clients to obtain and
8 maintain all required business licenses, use permits and building and health code
9 standards required in the local municipality. Providing transitional housing will
10 require at least one if not multiple types of business licenses. Depending on how the
11 business is structured these licenses will be issued by local municipalities but
12 additional licenses may be required by a state agency, usually the Department of
13 Health. It is the responsibility of all business owners to obtain and maintain all
14 required business licenses."

15 21. In addition to these licenses, each house must meet the following criteria. Only
16 relevant criteria are listed:

- 17 • Electrical facilities and lighting should be adequate, functioning and in compliance
18 with local building codes.
- 19 • Exit windows from sleeping rooms must be provided.
- 20 • Exit windows from sleeping rooms must be of adequate area or dimension.
- 21 • Smoke detectors must be in bedrooms and operational.
- 22 • Smoke detectors may not be centrally located outside of sleeping areas.

23 22. The exit window in Plaintiff's sleeping room at the time was not of adequate area or
24 dimension. Reconstruction on the home began prior to Plaintiff obtaining current
25 counsel and said windows were disposed of prior to a request to preserve such
evidence, although there are photographs available from the fire department
investigation.

26 23. More importantly, there were no operational smoke detectors installed within the
27 upstairs bedrooms.

28 24. The only smoke detector upstairs was centrally located outside of the sleeping areas.

29 25. Tenants living in the insured's house have included Department of Corrections
30 clientele.

- 1 26. The insured, Aletta Horton, operates several transitional/halfway houses throughout
2 Tacoma and Pierce County under a contract with the state Department of Corrections.
3 There is a local Komo News video interview with Aletta Horton verifying this
4 information, as well as various business records available to the public.
- 5 27. Mr. Schoonover, again the then “resident manager” of the home, was presumably
6 employed by the Defendant, Ms. Horton, or received consideration for living,
7 maintaining, and securing the facilities.
- 8 28. According to Mr. Schoonover, drinking alcohol was forbidden inside the home. His
9 responsibility was to enforce the no drinking policy and report to Defendant Horton
10 any violations. The consequences for drinking alcohol on site included raising rent
11 prices or removal from the premises until the person became sober.
- 12 29. There is at least one instance, according to Mr. Schoonover, where he was directly
13 responsible for enforcing the no-drinking policy.
- 14 30. In the State of Washington, Pierce County, and the City of Tacoma, rules governing
15 fire prevention are addressed in the International Fire Code (IFC) with state and local
16 adopted amendments, pursuant to WAC 51-50-003. As defined under the IFC:

17 Residential Group R-4. Residential Group R-4 shall include buildings, structures
18 or portions thereof for more than five but not more than 16 persons, excluding
19 staff, who reside on a 24-hour basis in a supervised residential environment and
20 receive custodial care. Buildings of Group R-4 shall be classified as one of the
21 occupancy conditions indicated below. This group shall include, but not be limited
22 to, the following:

23 Alcohol and drug centers
24 Assisted living facilities
25 Congregate care facilities
26 Group homes
27 Halfway houses
28 Residential board and care facilities
29 Social rehabilitation facilities

30 Group R-4 occupancies shall meet the requirements for construction as defined
31 for Group R-3, except as otherwise provided for in the International Building
32 Code.

33 Condition 1. This occupancy condition shall include buildings in which all
34 persons receiving custodial care, without any assistance, are capable of
35 responding to an emergency situation to complete building evacuation.

1 31. Washington State expressly did not adopt the R-4 designation but, according to
2 Lieutenant Ken Hansen with the Tacoma Fire Department, who agreed to the use of
3 his name in this complaint, halfway houses within Tacoma are instead treated under
4 either R-2 or R-3 groups and are subject to inspection.

5 32. Under **907.2.11.2** of the IFC (2015), Groups R-2, R-3, R-4 and I-1. Single or
6 multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3,
7 R-4 and I-1 regardless of occupant load at all of the following locations:

8 1. On the ceiling or wall outside of each separate sleeping area in the immediate
9 vicinity of bed-rooms.

10 2. In each room used for sleeping purposes.

11 33. Under the Tacoma Municipal Code 2.01.060 Minimum Building Requirements and
12 Repair Standards. Where there is a change of use or where there is a substantial
13 renovation as defined by the Building Code, all work shall be in accordance with the
14 Building Code, including the IEBC as adopted and amended in Chapter 2.02 of the
15 Tacoma Municipal Code.

16 34. Also under Tacoma Municipal Code 2.01.060 W. Smoke Alarms, Carbon Monoxide
17 Alarms, Fire Sprinkler Systems, and Fire Alarm Systems. 1. Smoke alarms. a.
18 General. Group I-1 and Group R occupancies, as defined in the Building Code, shall
19 be provided with single- and multiple- station smoke alarms in accordance with the
20 Fire Code. Note: This requirement applies to all existing I-1 and Group R
21 occupancies including those not undergoing additions, alterations, or repairs. c.
22 Location within dwelling and sleeping units. A smoke alarm shall be installed within
23 each sleeping room and directly outside of each sleeping area in the immediate
24 vicinity of bed rooms.

25 35. A previous version of the Tacoma Municipal Code, Chapter 2.01 as Adopted by
Ordinance No. 26380 March 16, 1999, states under 2.01.060 W. Smoke Detectors
and Fire Alarm Systems. 1. Smoke detectors. b. Additions, alterations, or repairs to
Group R Occupancies. When the valuation of an addition, alteration, or repair to a
Group R Occupancy exceeds \$1,000 and a permit is required, or when one or more
sleeping rooms are added or created in existing Group R Occupancies, smoke
detectors shall be installed in accordance with the Building Code. Under W.1.d. of the
same code from 1999, in dwelling units a detector shall be installed in each sleeping
room. Also under the 1999 version, "Dwelling unit" is defined as any building or
portion thereof which contains living facilities, including provisions for sleeping,
eating, cooking, and sanitation, as required by this chapter, for not more than one
family, or a congregate residence for ten or less persons.

- 1 36. The house at 1020 S. Sprague Avenue is listed as a 3-bedroom, 2-bathroom house,
2 but at the time of the fire there were a total of 5-bedrooms and potential 8-person
3 occupancy. It was purchased by Defendant in May of 2012.
- 4 37. There was no operational smoke detector installed in the Plaintiff's bedroom, nor was
5 there one installed in the vacant bedroom where the fire started. Penalties for non-
6 compliance with the Building Code are based on a point system. On Item No. 77,
7 Violation of "Missing or inoperative smoke detectors, carbon monoxide alarms or fire
8 extinguishers", the maximum points is 50. Item No. 78, Violation of "Improper
9 storage, building clutter, or other fire hazards", the maximum points is 25.
10 Accumulation of a certain level of points can lead to condemnation of the non-
11 compliant property.
- 12 38. In addition, according to a conversation with Lieutenant Ken Hansen, licensed
13 businesses such as halfway houses agree to comply with local municipal codes, and
14 are subject to a \$188 re-inspection fee following first non-compliance, and possible
15 shutting down of the facility for further non-compliance. Under RCW 43.44.110
16 Smoke detection devices in dwelling units—Penalty subsection (4) Any owner or
17 tenant failing to comply with this section shall be punished by a fine of not more than
18 two hundred dollars.
- 19 39. A battery operated smoke alarm costs approximately ten dollars (\$10). Further, a
20 representative from the Tacoma Fire Department stated that it could have provided
21 one free of charge had the Defendant put in a request.
- 22 40. Plaintiff suffered serious damage as a result of the fire and accompanying smoke,
23 spending approximately 30 days in recovery at Harborview Medical Center in
24 Seattle. There was severe damage to the Plaintiff, resulting in approximately 30%
25 damage to Plaintiff's body and which required skin grafts. Plaintiff Byrd was badly
injured by the fire and was taken by ambulance to the ICU of Harborview Medical
Center. There is irreparable damage done to his body, and Mr. Byrd will be unable to
effectively use his hands in the same way as before the fire. According to medical
records, Mr. Byrd was diagnosed "with ~30% TBSA partial deep and full thickness
burns with circumferential burns to his bilateral upper extremities, facial burns, and
scalp burns as well as with possible inhalation burn injury."
41. Plaintiff inhaled a great amount of black smoke, to the point that his family feared he
would likely die during the first days of treatment while he remained on an artificial
ventilator. After his release from Harborview following a 30-day stay, Mr. Byrd was
advised to see a physical therapist to help regain movement throughout his body,
including his hands and arms.

1 42. During Plaintiff's 30-day stay at the hospital, Defendant Ms. Horton exclaimed
2 multiple times to Plaintiff Byrd that she possessed insurance and that it would cover
3 Plaintiff's injuries.

4 43. During Plaintiff's 30-day stay at the hospital, Safeco Insurance Company of America
5 employees and/or agents or adjusters contacted Plaintiff two times on the phone.
6 Plaintiff was not represented by an attorney at the time.

7 44. Plaintiff sent a demand letter to Safeco Insurance and its designated adjuster, a Senior
8 Claims Resolution Specialist, who stated that the demand was in excess of the limits
9 of the policy, but also denied liability. When Plaintiff requested any and all policy
10 limits, including other policies such as umbrellas or otherwise in place, Defendant
11 (through the adjuster) provided only an expired single page Landlord Protection
12 Policy Declarations with a stated policy period from January 19, 2016 to January 19,
13 2017. Again, the accident occurred in October of 2017.

14 45. At the time of the fire, Mr. Byrd was asleep and resting in preparation for his early
15 shift at a concrete company, a job he was forced to quit due to the pain in his hands
16 and because of the outside cold weather affecting his ability to function well.

17 46. At his current workplace, he now performs menial tasks such as applying hinges to
18 doors. At the suggestion of his physical therapists, Mr. Byrd is making every effort to
19 maintain motion for rehabilitative purposes.

20 47. The acts and omissions of the Defendant described above constitute the tort of
21 negligence for which the Defendant is liable.

22 48. The acts and omissions of the Defendant described above constitute the tort of
23 negligence *per se* under RCW 5.40.050.

24 49. The acts and omissions of the Defendant described above constitute violation of the
25 Consumer Protection Act pursuant to RCW 70.128.058.

As a proximate result of the acts and omissions of the Defendant, its agents and
employees as described above, Plaintiff suffered a loss of enjoyment of life, pain and
suffering and damages generally in an amount which will be determined at time of
trial. Plaintiffs injuries and damages are ongoing.


1 **IV. PRAYER FOR RELIEF**

2 WHEREFORE, having fully set forth his complaint for damages against this Defendant,
3 Plaintiff respectfully prays for the following relief:

- 4 1. That a money judgment be entered in favor of Plaintiff and against this Defendant in
5 an amount which will fully and fairly compensate Plaintiff for his injuries and
6 damages sustained herein;
- 7 2. That Plaintiff be awarded medical and rehabilitative expenses, both past and future;
- 8 3. That Plaintiff be awarded past and future pain and suffering;
- 9 4. That Plaintiff be awarded lost income and any reduction in future earnings capacity;
- 10 5. That the Court award Plaintiff such other relief as it determines to be fair and
11 equitable in the circumstances of the case;
- 12 6. A trial by a jury of Mr. Byrd's peers under Const. art. I, § 21 and RCW 3.50.135.

13 RESPECTFULLY SUBMITTED this 13th day of September 2018.

14 Simpson Law PLLC

15 

16 Richard M. Simpson WSBA No. 53162
17 Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s),

v.

ALETTA HORTON and MBK HOUSING,
LLC,

Defendant(s).

NO. 18-2-11302-0

DECLARATION OF ALETTA HORTON IN
SUPPORT OF DEFENDANTS' MOTION
TO ENFORCE SETTLEMENT
AGREEMENT AND FOR CR 11
SANCTIONS

Aletta Horton declares as follows:

1. I am one of the defendants in this matter. I am competent to testify to the following, which is based on my personal knowledge.
2. I purchased the home at 1020 Sprague Avenue in Tacoma, Washington in 2012. I purchased the home in my own name.
3. I am the sole member of MBK Housing, LLC. MBK Housing, LLC holds no assets and is uninsured. MBK Housing, LLC does not now, nor did it ever, own the home at 1020 Sprague Avenue in Tacoma.

DECLARATION OF ALETTA HORTON IN SUPPORT
OF DEFENDANTS' MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND FOR CR 11
SANCTIONS - 1
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NO. 18-2-11302-0

PREG O'DONNELL & GILLET PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

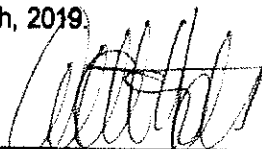
1 4. I rented out individual rooms in the home at 1020 Sprague to individual tenants. At
2 the time of the fire that is the subject of this lawsuit, the home had five residents, one of whom
3 was plaintiff Dominick Byrd.

4 5. A fire broke out at the 1020 Sprague home on October 18, 2017. The Tacoma Fire
5 Department investigated the fire but I understand no one has been able to identify the cause. Mr.
6 Byrd has brought claims for personal injury against myself and my limited liability company, MBK
7 Housing, LLC relating to injuries he suffered in that fire.

8 6. On February 28, 2019, I signed a Full and Final Release of All Claims Agreement
9 ("Release Agreement") which my counsel forwarded to me in anticipation of a meeting the next
10 day on March 1, 2019. A copy of that document is attached as Exhibit "6" to Mr. Daly's Declaration.
11 Page 4 of that Release Agreement contains a true and correct copy of my signature.

12 I declare under penalty of perjury under the laws of the State of Washington that the
13 foregoing is true and correct.

14 SIGNED and DATED this 5th day of March, 2019.

15
16 
17 _____
Aletta Horton

18
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25
DECLARATION OF ALETTA HORTON IN SUPPORT
OF DEFENDANTS' MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND FOR CR 11
SANCTIONS - 2
00587-4533 5531128.docx
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TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 **DECLARATION OF SERVICE**

2 The undersigned declares under penalty of perjury under the laws of the State of
3 Washington that on this day the undersigned caused to be served in the manner indicated below
4 a copy of the foregoing document directed to the following individuals:

5 **Counsel for Plaintiff Dominick Byrd:**

6 Richard Simpson
7 Simpson Law PLLC
8 539 Broadway
9 Tacoma, WA 98402

- 8 **Via Messenger**
9 **Via Facsimile – (253) 295-5824**
10 **Via U.S. Mail, postage prepaid**
11 **Via Overnight Mail, postage prepaid**
12 **Via Court E-Service or email with recipient's approval**
13 ***richard@rmsimpsonlaw.com***

14 DATED at Seattle, Washington, this 10th day of March, 2019.

15 
16 _____
17 Ana I. Todakonzie

Honorable Edmund Murphy
Defendants' Motion to Enforce
Settlement Agreement and CR 11 Sanctions
Hearing: March 15, 2019, 9am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s),

v.

ALETTA HORTON and MBK HOUSING,
LLC,

Defendant(s).

NO. 18-2-11302-0

MOTION TO ENFORCE SETTLEMENT
AGREEMENT AND FOR CR 11
SANCTIONS

I. RELIEF REQUESTED

Defendants, Aletta Horton and MBK Housing, LLC (collectively "Defendants"), move for enforcement of the Full and Final Release of All Claims Agreement ("Settlement Agreement") executed by plaintiff Dominick Byrd and Defendants releasing both defendants Aletta Horton and MBK Housing, LLC. Defendants also request sanctions against Plaintiff's counsel in the amount of \$5,000.00 pursuant to Civil Rule 11.

On February 11, 2019, Plaintiff demanded policy limits in exchange for a full release of claims. On February 12, 2019, Defendants accepted. Plaintiff's counsel prepared the Settlement Agreement releasing both defendant Aletta Horton and MBK Housing, LLC. That Agreement

1 was signed by defendant Aletta Horton on February 28, 2019 and by plaintiff Dominick Byrd at
2 an in-person meeting between all counsel and Mr. Byrd on March 1, 2019. After Mr. Byrd
3 signed, Plaintiff's counsel demanded the settlement check be handed to him before he would
4 provide the fully executed Settlement Agreement just signed by his client. Counsel was provided
5 that check, finalizing the settlement at that moment.

6 What happened afterwards supports an award of sanctions. Immediately after being
7 providing the settlement check, Plaintiff's counsel purposefully and materially altered the first
8 page of the Settlement Agreement by crossing out MBK Housing, LLC as a Released Party,
9 subsequently tore that page off the Settlement Agreement, and refused to initial an exact copy
10 of the original first page. Counsel also retained possession of the \$500,000.00 settlement
11 check. His "Brief on Reasonableness Hearing" falsely represents that MBK was not released by
12 the Agreement. This outrageous post-settlement conduct warrants sanctions.

13 II. RELEVANT FACTS

14 This lawsuit arises from a house fire at 1020 South Sprague Avenue in Tacoma,
15 Washington on October 18, 2017. *Plaintiff's Complaint* at ¶ III.1. The house is owned by
16 defendant, Aletta Horton, as an individual. See Declaration of Aletta Horton ("Horton Decl.") at ¶
17 2; see also Exhibit 1 to Declaration of Jeffrey Daly ("Daly Decl.") at 7:25-8:3. Ms. Horton
18 purchased the home in approximately 2012. Exh. 1 to Daly Decl. at 9:21-10:1. Ms. Horton
19 rented out individual rooms in the house. Horton Decl at ¶ 4. At the time of the fire the home had
20 five residents, including Mr. Byrd. *Id.* The cause of the fire was investigated by the Tacoma Fire
21 Department, but has not been determined. *Id.* Mr. Byrd brings claims for personal injury arising
22 from the fire against Ms. Horton and MBK Housing, LLC. Ms. Horton is the sole member of MBK
23 Housing, which is uninsured and holds no assets. Horton Decl. at ¶ 3. MBK Housing, LLC has
24 never owned the home at 1020 Sprague. *Id.*

1 **Settlement Negotiations.**

2 On February 11, 2019, following denial of Plaintiff's motion for summary judgment,
3 Plaintiff's counsel sent a letter demanding policy limits in exchange for a release of all claims.
4 Exh. 2 to Daly Decl. On February 12, 2019, Plaintiff's settlement demand was accepted by John
5 Silk, Esq., counsel for Safeco, who had been in direct communication with Plaintiff's counsel
6 about possible settlement over the preceding weeks. Exh. 3 to Daly Decl.

7 On February 15, 2019, Plaintiff's counsel forwarded a Settlement Agreement that clearly
8 identified both Aletta Horton and MBK Housing, LLC as "Released Parties." See Exh. 4 to Daly
9 Decl. Defendants proposed certain minor revisions, but Plaintiff's counsel failed to acknowledge
10 those. Exh. 5 to Daly Decl. Defendants ultimately decided to accept the Settlement Agreement
11 as originally presented, with no revisions or modifications. Exh. 6 to Daly Decl.

12 **Meeting to finalize the settlement.**

13 At Plaintiff's counsel's request, a meeting was set for March 1, 2019 in Tacoma to
14 finalize the settlement documents and provide the settlement check. Ms. Horton had already
15 signed the Settlement Agreement prepared by Plaintiff's counsel. Horton Decl., ¶ 6.

16 The meeting on March 1, 2019 was attended by Plaintiff, Plaintiff's counsel, and
17 Defendants' counsel Jeffrey Daly and Stephanie Ballard. See Daly Decl. at ¶ 8. *Id.* Defendants
18 never agreed or represented that Ms. Horton would attend the meeting, as Defendants' counsel
19 had already obtained her signature on Plaintiff's Settlement Agreement. *Id.* at ¶ 9.

20 *Plaintiff's counsel initiates the meeting by insisting his client will only dismiss*
21 *Aletta Horton personally, not MBK Housing, LLC.*

22 At the meeting plaintiff's counsel said his client was only willing to dismiss and release
23 Ms. Horton individually, not MBK Housing, LLC, despite both entities being identified as
24 Released Parties in the Settlement Agreement he prepared. *Id.* at ¶ 10. Mr. Simpson said his
25 client would release Ms. Horton for the \$500,000 in settlement funds but the case against MBK

1 Housing, LLC would proceed following Ms. Horton's dismissal. *Id.* This was contrary to the
2 terms of the Settlement Agreement counsel had written, which released both Aletta Horton and
3 MBK Housing LLC. *Id.* at ¶ 11. Defense counsel made absolutely clear that Ms. Horton would
4 only agree to a Settlement Agreement which released both defendants. *Id.* at ¶ 12.

5 *Plaintiff's counsel suggests attaching Ms. Horton's signature to another version*
6 *of the Settlement Agreement which does not release MBK Housing, LLC.*

7 Plaintiff's counsel requested to see the signature of Ms. Horton, and it was provided for
8 his review (it was on a loose page at the time). *Id.* at ¶ 13. He proposed using her signature on
9 a completely different version of the Settlement Agreement which did not release MBK. *Id.*; see
10 also Exh. 8 to Daly Decl. Defense counsel declined this, but during this discussion, plaintiff's
11 counsel retained control over Ms. Horton's signature page for a time before finally returning it.
12 See Daly Decl. at ¶ 14.

13 *Plaintiff Dominick Byrd signs the original version of the Settlement Agreement*
14 *that Plaintiff's counsel had transmitted on February 15, 2019, and which had*
already been signed by Ms. Horton.

15 The meeting was going nowhere. Before leaving, defense counsel made clear they still
16 agreed to the Settlement Agreement which Ms. Horton had signed, and if Mr. Byrd signed it, the
17 settlement funds would be provided. *Id.* at ¶ 15. Ultimately Mr. Simpson said plaintiff would sign
18 that Settlement Agreement. *Id.* at ¶ 17. Mr. Simpson and Mr. Byrd were allowed time to review
19 the document again. *Id.* at ¶ 18. When defense counsel returned to the conference room, Mr.
20 Byrd signed the Settlement Agreement. *Id.* at ¶ 19. **At that moment, the Settlement**
21 **Agreement which released both Ms. Horton and MBK Housing, LLC had been signed by**
22 **both Mr. Byrd and Ms. Horton, creating an enforceable settlement agreement.** Counsel's
23 signature was not necessary, but the document was given to Mr. Simpson to sign. *Id.*

1 *Mr. Simpson is given the settlement proceeds and the settlement is complete.*

2 Mr. Simpson held the executed Settlement Agreement on his lap rather than on the
3 conference room table, and demanded that he be given the settlement check. *Id.* at ¶ 21. Mr.
4 Daly requested that Mr. Simpson provide the executed Settlement Agreement so that copies
5 could be made. *Id.* at ¶ 22. Mr. Simpson refused, insisting that the check be handed over first.
6 *Id.* at ¶ 23. Since Plaintiff had signed the Settlement Agreement already, creating an
7 enforceable agreement under CR 2A, Mr. Daly agreed to provide the settlement check after
8 receiving assurances from Mr. Simpson that he would thereafter provide the executed
9 Settlement Agreement. *Id.* at ¶ 24.

10 *Mr. Simpson accepts the settlement funds.*

11 Out of an abundance of caution, and based upon Mr. Simpson's extremely unusual
12 behavior, Mr. Daly asked Ms. Ballard to video record the exchange of the settlement check for
13 the executed Settlement Agreement on her iPhone. A copy of that video is Exhibit 8.¹

14 The video shows Plaintiff's counsel accepting the settlement check, reviewing it, and
15 placing it in his suit pocket without providing the Settlement Agreement, to the astonishment of
16 defense counsel. Mr. Simpson takes the Settlement Agreement and inspects it, saying the
17 original date from when he drafted the document was still on the first page. As the parties had
18 dated their signatures, Mr. Daly suggested a simple date change on that first page which
19 counsel could initial.

20 *Mr. Simpson tries to materially alter the already-executed Settlement Agreement.*

21 Instead of simply changing the date so both counsel could initial, **Mr. Simpson crossed**
22 **out the name "MBK Housing, LLC" as a Released Party, altering a material term the**
23 **defense had already told him they would never agree to.** See Exh. 10 to Daly Decl. Mr.
24 Simpson did so while asserting he was only changing the date. See Exh. 9.

25 _____
¹ Per the Court's JA's instructions, the video will be provided via thumb drive.

1 In defense counsels' minds the case was settled, but if plaintiff's counsel disputed that
2 fact, it was appropriate for the settlement funds to be returned. Return of the settlement check
3 was repeatedly demanded and Mr. Simpson categorically refused. *Id.* at ¶ 27.

4 *Mr. Simpson again physically alters a fully executed Settlement Agreement.*

5 While Mr. Daly was out of the room temporarily, Mr. Simpson tore the first page off of the
6 Settlement Agreement, saying it was "his mistake" to cross off MBK Housing, LLC, and he
7 produced another version of that first page which he said was identical to the one he was
8 replacing. See Ballard Decl. at ¶ 6; see also Exh. 9 to Daly Decl., iPhone video. That
9 representation turned out to be false.

10 *Law enforcement was called.*

11 Mr. Simpson's actions showed he had no intention of complying with the terms of the
12 executed Settlement Agreement, but that he intended to keep both the settlement check and the
13 executed Settlement Agreement. This meant he had obtained a half million dollars under false
14 pretenses and altered a legally binding document without authority to do so, both arguably
15 criminal actions. He even refused to provide the Settlement Agreement to counsel so that
16 copies could be made. This situation was unprecedented for defense counsel. See Daly Decl. at
17 ¶ 28. Since plaintiff's counsel had gained possession of a half million dollars under false
18 pretenses, and refused to provide the executed Settlement Agreement so the defense could
19 have a record of his wrongdoing, defense counsel decided to call law enforcement. *Id.*

20 Mr. Simpson started to pack up his things before law enforcement arrived. *Id.* at ¶ 31. He
21 still had both the executed Settlement Agreement and the settlement check in his possession.
22 *Id.* He told Mr. Byrd they were done, and the meeting was over. *Id.*

23 Officers who arrived were very surprised to learn that the check was for half a million
24 dollars. Only with the police presence did plaintiff's counsel give up the executed copy of the
25 Settlement Agreement, albeit without the first page. See Ballard Decl. at 8. Ms. Ballard also

1 obtained the original first page of the executed Settlement Agreement that Mr. Simpson had
2 ripped off the document. *Id.*; see also Exh. 10 to Daly Decl. After speaking with everyone
3 involved, the officers advised this was a civil matter, and departed. Their appearance was
4 nevertheless critical, as it was only with their presence that plaintiff's counsel turned over the
5 signed Settlement Agreement prior to leaving.

6 *Mr. Simpson again attempts to use a different version of the first page of the*
7 *Settlement Agreement to remove MBK Housing, LLC as a Released Party.*

8 Defense counsel wanted a clean copy of the Settlement Agreement, so they provided an
9 identical copy of the first page of the executed Settlement Agreement and corrected the date as
10 Mr. Simpson had requested. See Daly Decl. at ¶ 35. Mr. Daly initialed this change but Mr.
11 Simpson refused to do so. *Id.* Mr. Simpson instead proposed using a different first page. See
12 Daly Decl. at ¶ 37; see also Exh. 12 to Daly Decl. He represented this new first page was the
13 same as the original. *Id.* That was false. See *Daly Decl.* at ¶ 38. Most notably and materially, the
14 page he provided omitted MBK Housing, LLC as a released party. *Id.*

15 On March 4, 2019, plaintiff's counsel filed a "Brief on Reasonableness Hearing" for
16 hearing on the same date as this Motion. That Brief falsely suggests to this Court that there is a
17 settlement only between plaintiff and Ms. Horton individually, and curiously mentions nothing of
18 the events of March 1st. The truth is that by virtue of plaintiff's signature on the original
19 Settlement Agreement releasing both Ms. Horton and MBK, at the direction of plaintiff's counsel
20 and in his presence, and with the acceptance by plaintiff's counsel of the settlement check,
21 there is not only an enforceable CR 2A agreement, but a finalized settlement of all claims in this
22 matter which defendants ask this Court to enforce.

23 III. ISSUES

- 24 1. Whether the Court should enforce the Settlement Agreement between Plaintiff
25 Dominick Byrd and Defendants, Aletta Horton and MBK Housing, LLC, where a
written Settlement Agreement was fully executed by both parties who were

1 represented by counsel, and settlement funds were subsequently conveyed to, and
retained by Plaintiff's counsel?

- 2 2. Whether the Court should assess and award attorneys' fees and costs against
3 Plaintiff's counsel under CR 11, based upon his intentional misrepresentations and
behavior?

4 **IV. EVIDENCE RELIED UPON**

5 This motion relies upon the Declarations of Jeffrey Daly, Esq. Stephanie Ballard, Esq.
6 and Aletta Horton, all exhibits attached thereto, the papers and pleading on file in this matter,
7 and any such oral argument as may be adduced at the time of the hearing on this motion.

8 **V. ARGUMENT AND AUTHORITY**

9 When one party denies the existence of a settlement reached during the course of
10 pending litigation, the appropriate recourse is a motion to enforce the settlement. *See, e.g.,*
11 *Sherrod ex. Rel. Cantone v. Kidd*, 138 Wn. App. 73, 155 P.3d 976 (2007). Upon petitioning the
12 trial court for enforcement of a settlement agreement, the moving party must show the existence
13 the material terms of the agreement. *In re Marriage of Ferree*, 71 Wn. App. 35, 41, 856 P.2d
14 706 (1993); *Patterson v. Taylor*, 93 Wn. App. 579, 584, 969 P.2d 1106 (1999). The law favors
15 the private settlement of disputes and is inclined to view them with finality. *Stottlemyre v. Reed*,
16 35 Wn. App. 169, 665 P.2d 1383 (1983).

17 **1. The Parties have a Fully Executed Settlement Agreement.**

18 Civil Rule 2A requires that agreements between parties be in writing. When the
19 requirements of Civil Rule 2A are fulfilled, the Settlement Agreement is considered as a binding
20 contract. *See Lavigne v. Green*, 106 Wn. App. 12, 17, 23 P.3d 515 (2001); *Brinkerhoff v.*
21 *Campbell*, 99 Wn. App. 692, 994 P.2d 911 (2000). A party's "second thoughts" about the
22 amount of a settlement do not make an agreement invalid. *Lavigne*, 106 Wn. App. At 20.

23 The Settlement Agreement here is in writing, executed by both parties, and clearly sets
24 forth all material terms and conditions. Plaintiff's own counsel proposed the version of the
25 Settlement Agreement that Ms. Horton and Mr. Byrd signed. Mr. Byrd and Ms. Horton executed

1 the Settlement Agreement, which provides in no uncertain terms that the terms are "completely
2 read, understood and voluntarily accepted." Exh. 11 to Daly Decl.

3 Plaintiff signed the Settlement Agreement in the presence of his counsel. After that
4 signature Plaintiff's counsel insisted on being provided the settlement check, and that check
5 was provided. Counsel's subsequent actions notwithstanding, Plaintiff cannot deny that Mr. Byrd
6 voluntarily executed the Settlement Agreement and that the full settlement amount was
7 conveyed to and accepted by Plaintiff's counsel. The Settlement Agreement attached as Exhibit
8 11 should be enforced by this Court. As that Settlement Agreement dismisses all claims against
9 all Defendants, and has been fully performed, this case would be immediately ready for
10 dismissal.

11 **2. Plaintiff's Counsel's Actions Warrant Sanctions.**

12 Defendants seek an award of fees and costs associated with the necessity of bringing
13 this motion to enforce the Settlement Agreement, as well as sanctions under CR 11. Under CR
14 11, every pleading, motion or legal memorandum signed by a party or attorney is a certification
15 by the party or attorney that "after an inquiry reasonable under the circumstances," the
16 document(s) submitted is, among other things, well grounded in fact, warranted under existing
17 law, and not interposed for an improper purpose. "[T]he Court, upon motion or upon its own
18 initiative, may impose" sanctions against a party or attorney for violation of this rule. *CR 11(a)*.
19 Plaintiff's counsel violated CR 11 when he made numerous unethical and underhanded
20 attempts to materially alter the terms of a completed settlement. His actions have needlessly
21 increased the costs of this litigation. The Settlement Agreement was entered into in good faith
22 by Defendants and payment on the settlement was made. The material misrepresentations and
23 reprehensible conduct of Plaintiff's attorney Mr. Simpson are the only reason this Court's
24 intervention has become necessary.

1 In this regard, Defendants will note that none of the conduct complained of herein was
2 due to the actions of Mr. Byrd. Undersigned counsel doubts very much that Mr. Byrd directed
3 Mr. Simpson to behave the way he did. If sanctions are awarded, they should be assessed only
4 against Mr. Simpson and not Mr. Byrd. Close review of counsel's actions shows why sanctions
5 are appropriate.

6 a. Plaintiff's counsel arguably committed a theft by deception.

7 Plaintiff's counsel represented he would provide the executed Settlement Agreement
8 upon being provided the settlement check. Instead, when he was provided the settlement
9 check, he withheld it and then proceeded to make material changes to the Settlement
10 Agreement that he had to know the defense would never agree to. RCW 9A.56.020(1)(b)
11 defines theft as including actions which are "by color or aid of deception to obtain control over
12 the property or services of another or the value thereof, with intent to deprive him or her of such
13 property or services." Plaintiff's counsel clearly used deception to obtain control over the
14 settlement funds. He cannot argue that his actions were made under a good faith claim of title,
15 as referenced in subsection 2(a) of that statute, as the second he had the settlement check he
16 did everything he could to materially alter an already-executed Settlement Agreement to delete
17 MBK Housing, LLC as a released party, something the defense had made absolutely clear was
18 never going to be acceptable.

19
20 b. Plaintiff's counsel arguably committed forgery.

21 RCW 9A.60.030 defines forgery thus:

22 (1) A person is guilty of forgery if, **with intent to injure or defraud:**

23 (a) He or she **falsely makes, completes, or alters a written instrument ...**
24
25

1 (Emphasis added.) This definition does not require another person to actually be injured or
2 defrauded. It only requires the intent to injure or defraud and the referenced actions in order for
3 the crime to be complete. RCW 9A.60.010 defines "falsely alter" as "to change, without
4 authorization by anyone entitled to grant it, a written instrument, whether complete or
5 incomplete, by means of erasure, **obliteration**, deletion, **insertion of new matter**, transposition
6 of matter, or in any other manner." (Emphasis added.) Plaintiff's counsel intentionally and
7 without authority deleted a material term from the Settlement Agreement, the reference to MBK
8 Housing, LLC as a released party. He later attempted to insert as a new first page a completely
9 different version which did not include MBK Housing, LLC as a released party. Counsel cannot
10 reasonably believe he was authorized to make these changes. Defense counsel had just spent
11 the bulk of two hours explaining to him that they would never in a million years settle the case
12 without both Defendants being released. His intent was clearly to defraud and/or injure the
13 Defendants by falsely and materially altering a Settlement Agreement already signed by his
14 client and for which he had already received payment of settlement funds.

15
16 The only reason this motion had to be filed was because of the above actions by
17 plaintiff's counsel, which is it submitted were in violation of the Rules of Professional Conduct
18 and arguably criminal statutes. An enforceable Settlement Agreement was signed by the plaintiff
19 and defendant and plaintiff's actions attempted to destroy that document. The defendants are
20 entitled to sanctions against plaintiff's counsel for his outrageous behavior.

21
22 **VI. CONCLUSION**

23 Plaintiff's counsel's post-settlement actions are irrelevant for purposes of Defendants'
24 primary motion. A Settlement Agreement was signed by both parties which releases both Ms.
25 Horton and MBK Housing, LLC. That Settlement Agreement had been drafted by plaintiff's

1 counsel, and plaintiff had a full opportunity to review it with his counsel before signing. The
2 terms of that Settlement Agreement provided a full and final release of any and all claims
3 against both Ms. Horton and MBK Housing, LLC. The settlement funds referenced in the subject
4 agreement were provided to Plaintiff's counsel, making performance of the settlement complete.
5 Counsel's actions thereafter did nothing to negate that completed performance.

6 Incredibly, plaintiff's counsel has filed with this Court a "Brief on Reasonableness
7 Hearing" which mentions none of the unbelievable events of March 1st. In fact, the Brief falsely
8 implies that there is a settlement between plaintiff and Ms. Aletta Horton only, despite plaintiff's
9 signature on a Settlement Agreement which releases both Ms. Horton and MBK Housing, LLC.

10 For the above mentioned reasons, Defendants requests that the Court enforce the
11 Settlement Agreement in the form originally signed by the parties, and that sanctions be
12 assessed against Plaintiff's counsel in the amount of \$5,000.00. A proposed Order is attached
13 hereto.

14 DATED this 6th day of March, 2019.

15 PREG O'DONNELL & GILLETT PLLC

16
17 By 

Jeffrey W. Daly

WSBA #26915

Stephanie B. Ballard

WSBA #49268

18 Attorneys for Defendants Aletta Horton and MBK
19 Housing, LLC
20
21
22
23
24
25

1 **DECLARATION OF SERVICE**

2 The undersigned declares under penalty of perjury under the laws of the State of
3 Washington that on this day the undersigned caused to be served in the manner indicated
4 below a copy of the foregoing document directed to the following individuals:

5 **Counsel for Plaintiff Dominick Byrd:**

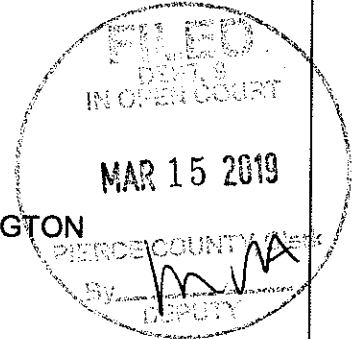
6 Richard Simpson
7 Simpson Law PLLC
8 539 Broadway
9 Tacoma, WA 98402

- 8 **Via Messenger**
9 **Via Facsimile – (253) 295-5824**
10 **Via U.S. Mail, postage prepaid**
11 **Via Overnight Mail, postage prepaid**
12 **Via Court E-Service or email with
13 recipient's approval
14 *richard@rmsimpsonlaw.com***

15 DATED at Seattle, Washington, this 10th day of March, 2019.

16 
17 _____
18 Ana I. Todakonzie

Honorable Edmund Murphy
Defendants' Motion to Enforce
Settlement Agreement and CR 11 Sanctions
Hearing Date: March 15, 2019, 9am



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s),

v.

ALETTA HORTON and MBK HOUSING,
LLC,

Defendant(s).

NO. 18-2-11302-0

~~PROPOSED~~ ORDER GRANTING
DEFENDANTS' MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND FOR
CR 11 SANCTIONS

(Clerk's Action Required)

THIS MATTER having come before the above-entitled Court on Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions, and the Court having considered the files and records herein, including the following:

1. Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions;
2. Declaration of Jeffrey W. Daly in support of Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions;
3. Declaration of Aletta Horton in support of Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions;
4. Declaration of Stephanie B. Ballard in support of Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions;

~~PROPOSED~~ ORDER GRANTING DEFENDANTS'
MOTION TO ENFORCE SETTLEMENT AGREEMENT
AND FOR CR 11 SANCTIONS - 1
00567-4533 5548746.docx
NO. 18-2-11302-0

PREG O'DONNELL & GILLET PLLC

901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 5. Declaration of Richard M. Simpson in Defense of Defendants' Counsels' Motion
2 and Support for CR 11 Sanctions Against Defendants' Counsel ;

3 6. Reply on Motion to Enforce Settlement Agreement and for Sanctions, Opposition
4 to Request for Sanctions; and

5 7. Declaration of Jeffrey W. Daly in Support of Defendants' Reply to Motion to Enforce
6 Settlement Agreement and for CR 11 Sanctions;

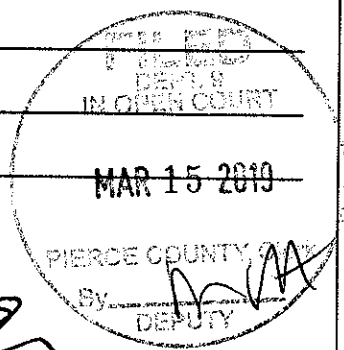
7 and the Court having heard oral arguments of counsel, and the Court being otherwise fully advised
8 in the premises, now, therefore, it is hereby ORDERED that:

9 1. Defendants' Motion to Enforce Settlement Agreement is **GRANTED**. The
10 document which is attached as Exhibit 11 to the Daly Declaration in Support of the Motion to
11 Enforce Settlement Agreement is hereby recognized and enforced as a valid CR 2A Settlement
12 Agreement. Plaintiff shall pay all liens, including all medical liens, directly to the health care
13 providers in accordance with the terms of that Settlement Agreement. Failure to pay medical liens
14 shall be considered not only a breach of the Agreement but also a violation of this Court's Order.

15 2. Defendants' Motion for CR 11 Sanctions is **GRANTED**. Defendants are awarded
16 sanctions against plaintiff's counsel Richard Simpson in the amount of \$5,000. Sanctions shall be
17 paid to Defendants via their Counsel within ten (10) days of the entry of this Order.

18 _____
19 _____
20 _____
21 DONE IN OPEN COURT this 15th day of March, 2019.

22 _____
23 _____
24 JUDGE EDMUND MURPHY
25 _____



1 Presented by

2 PREG O'DONNELL & GILLETT PLLC

3

4 By 

Jeffrey W. Daly, WSBA #26915

Amber R. Hazelquist, WSBA #41283

Attorneys for Defendants Aletta Horton
and MBK Housing, LLC

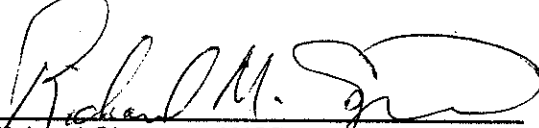
7

8 Approved as to form;
Notice of Presentation waived:

9

SIMPSON LAW PLLC

10

11 By 

Richard Simpson, WSBA #53162

Attorneys for Plaintiff Dominick Byrd

13

14

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25

1 **DECLARATION OF SERVICE**

2 The undersigned declares under penalty of perjury under the laws of the State of
3 Washington that on this day the undersigned caused to be served in the manner indicated below
4 a copy of the foregoing document directed to the following individuals:

5 **Counsel for Plaintiff Dominick Byrd:**

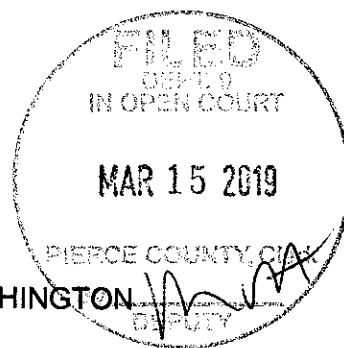
6 Richard Simpson
7 Simpson Law PLLC
8 539 Broadway
9 Tacoma, WA 98402

- 8 Via Messenger
9 Via Facsimile – (253) 295-5824
10 Via U.S. Mail, postage prepaid
11 Via Overnight Mail, postage prepaid
12 Via Court E-Service or email with
13 recipient's approval
14 *richard@rmsimpsonlaw.com*

15 DATED at Seattle, Washington, this 13th day of March, 2019.

16 
17 _____
18 Ana I. Todakonzie

Honorable Edmund Murphy



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s),

NO. 18-2-11302-0

v.

STIPULATION AND ORDER OF
DISMISSAL WITH PREJUDICE

ALETTA HORTON and MBK HOUSING,
LLC,

(Clerk's Action Required)

Defendant(s).

I. STIPULATION

COME NOW, Plaintiff Dominick Byrd and Defendants Aletta Horton and MBK Housing, LLC, by and through their undersigned attorneys of record, and stipulate that all claims asserted herein, or which could have been asserted herein by Plaintiff have been fully, finally and forever resolved and settled satisfactorily and that the Complaint shall be dismissed with prejudice and without costs to any party.

DATED this 15th day of March, 2019.

PREG O'DONNELL & GILLETT PLLC

By _____
Jeffrey W. Daly, WSBA #26915
Amber R. Hazelquist, WSBA #41283
Stephanie B. Ballard, WSBA #49268
Attorneys for Defendants Aletta Horton and MBK
Housing, LLC

STIPULATION AND ORDER OF DISMISSAL WITH
PREJUDICE - 1
00567-4533 5542838
NO. 18-2-11302-0

PREG O'DONNELL & GILLETT PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 DATED this 15 day of March, 2019.

2 SIMPSON LAW, PLLC

3
4 By [Signature]
Richard M. Simpson, WSBA #53162
5 Attorney for Plaintiff Dominick Byrd

6 **II. AGREED ORDER**

7 Pursuant to the stipulation of the above parties and for good cause appearing herein, IT
8 IS HEREBY ORDERED that the Complaint is hereby dismissed with prejudice and without fees
9 and costs to any party.

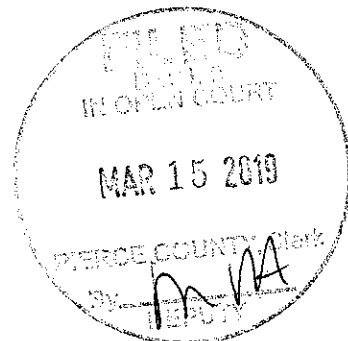
10 DATED this 15th day of March, 2019.

11
12 [Signature]
13 JUDGE / COURT COMMISSIONER,
EDMUND MURPHY

14 Presented by:

15 PREG O'DONNELL & GILLETT PLLC

16 By [Signature]
17 Jeffrey W. Daly, WSBA #26915
18 Amber R. Hazelquist, WSBA #41283
19 Stephanie B. Ballard, WSBA #49268
Attorneys for Defendants Aletta Horton
and MBK Housing, LLC



20 Agreed to & Approved as to Form;
21 Notice of Presentation Waived:

22 SIMPSON LAW, PLLC

23 By [Signature]
24 Richard M. Simpson, WSBA #53162
25 Attorneys for Plaintiff Dominick Byrd

April 18 2019 11:13 AM

KEVIN STOCK
COUNTY CLERK
NO: 18-2-11302-0

1 Notice of Appeal
2 (Trial Court Decision)
3 [Rule 5.3(a)]

4 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

5 Dominick BYRD, an individual,) No.: 18-2-11302-0

6)
7 Plaintiff,)

8 v.)

) NOTICE OF APPEAL TO
) COURT OF APPEALS

9 Aletta HORTON, an individual,)
10 and MBK HOUSING LLC, a)
Washington State Limited)
11 Liability Company,)

12 Defendant(s).)

13 Dominick Byrd, plaintiff, seeks review by the designated
14 appellate court of the trial court's grant of defendants'
15 CR 2A Motion to Compel Settlement, grant of defendants'
16 Dismissal with Prejudice, and grant of defendants' Motion
17 for CR 11 Sanctions entered on March 15, 2019 in the same
hearing. The decision prevents plaintiff from pursuing
adequate remedy against defendants. A copy of the trial
court's denial of Plaintiff's Motion for Reconsideration is
attached to this notice.

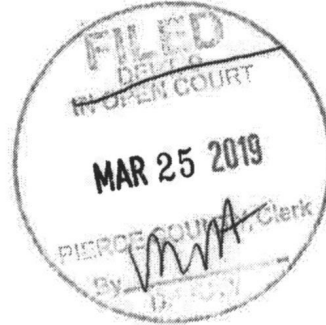
18 April 15, 2019

19 

20 Richard M. Simpson, WSBA #53162
21 Attorney for Plaintiff

22 Richard M. Simpson
23 539 Broadway
Tacoma, WA 98402
24 (253) 219-5225

Jeffrey W. Daly, WSBA #26915
Stephanie Ballard, WSBA #49268
Attorneys for Defendants
901 5th Ave., Ste. 3400,
Seattle, WA 98164
(206) 287-1775



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff,

vs.

ALETTA HORTON and MBK Housing,
LLC,

Defendants.

Cause No: 18-2-11302-0

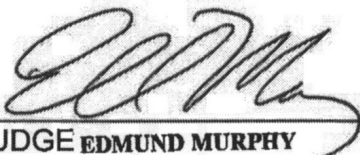
ORDER ON RECONSIDERATION

(OR)

On March 18, 2019, Plaintiff filed a Motion for Reconsideration of the Court's Order Granting Defendants' Motion to Enforce Settlement Agreement and for CR 11 Sanctions dated March 15, 2019. The Court has reviewed the Motion for Reconsideration and pursuant to PCLR 7(c)(3) it is hereby

ORDERED, ADJUDGED and DECREED that Defendants are not required to file a response, and Plaintiff's Motion for Reconsideration is DENIED. The hearing scheduled for March 29, 2019 at 9:00 a.m. is cancelled.

DATED this 25th day of March, 2019.



JUDGE EDMUND MURPHY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DOMINICK BYRD,

Appellant,


v.

ALETTA HORTON and MBK
HOUSING, LLC,

Respondents.

No. 53216-6-II

RULING DISMISSING
APPEAL

FILED
COURT OF APPEALS
DIVISION II
2019 SEP 23 PM 1:28
STATE OF WASHINGTON
BY  DEPUTY

After receiving settlement proceeds, Appellant Dominick Byrd filed a notice of appeal from the trial court's Order Granting Defendants' Motion Enforce Settlement Agreement and for CR 11 Sanctions, Stipulation and Order of Dismissal with Prejudice and Order on Reconsideration. On motion of Respondents Aletta Horton and MBK Housing, LLC, on May 31, 2019, the trial court ordered Appellant to post a supersedeas bond for the settlement amount of \$500,000 or deposit that amount in the trial court registry or a combination thereof totaling \$500,000 within seven days. Appellant has not complied with that order.¹ Respondents move to dismiss his appeal under RAP 2.5(b), which provides:

¹ On June 21, 2019, the trial court found that a bond proffered by Appellant's counsel was deficient, and again ordered the deposit of \$500,000 in the trial court registry within seven days. Appellant has not complied with that order either.


(1) *Generally.* A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2) or (iii) if, regardless of the result of the review based solely on the issues raised by the party accepting benefits, the party will be entitled to at least the benefits of the trial court decision or (iv) if the decision is one which divides property in connection with a dissolution of marriage, a legal separation, a declaration of invalidity of marriage, or the dissolution of a meretricious relationship.

(2) *Security.* If a party gives adequate security to make restitution if the decision is reversed or modified, a party may accept the benefits of the decision without losing the right to obtain review of that decision. A party that would otherwise lose the right to obtain review because of the acceptance of benefits shall be given a reasonable period of time to post security to prevent loss of review. The trial court making the decision shall fix the amount and type of security to be given by the party accepting the benefits.

On August 13, 2019, this court ordered Appellant to comply with the trial court's May 31, 2019 order within 10 days, notified Appellant that if he did not, his appeal would be dismissed. He has not complied with the trial court's May 31, 2019 order, so his appeal is DISMISSED with prejudice under RAP 2.5(b)(1)(ii) and without costs or fees to any party.

IT IS SO ORDERED.

DATED this 23rd day of September, 2019.



Eric B. Schmidt
Court Commissioner

cc: Richard M. Simpson
Jeffrey W. Daly
Stephanie B. Ballard
Amber R. Hazelquist
Hon. Edmund Murphy

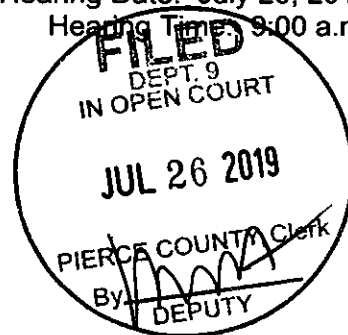
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7/31/2019 6:02/18/7



Honorable Edmund Murphy
Hearing Date: July 26, 2019
Hearing Time: 9:00 a.m.



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s),

NO. 18-2-11302-0

v.

ALETTA HORTON and MBK HOUSING,
LLC,

Defendant(s).

ORDER GRANTING DEFENDANTS'
MOTION FOR SANCTIONS REGARDING
DEFICIENT BOND AND JUNE 21, 2019
HEARING

~~[PROPOSED]~~ →

EM

THIS MATTER having come before the above-entitled Court on Defendants' Motion for Sanctions Regarding Deficient Bond and June 21, 2019 Hearing, and the Court having considered the files and records herein, including:

1. Defendants' Motion for Sanctions Regarding Deficient Bond and June 21, 2019 Hearing;
2. Declaration of Amber R. Hazelquist in Support of Defendants' Motion for Sanctions Regarding Deficient Bond and June 21, 2019 Hearing with attached exhibits;
3. Defendants' Reply to Non-Opposition to Defendants' Motion for Sanctions Regarding Deficient Bond and June 21, 2019 Hearing;
4. _____

ORDER GRANTING DEFENDANTS' MOTION FOR
SANCTIONS REGARDING DEFICIENT BOND AND
JUNE 21, 2019 HEARING - 1
00567-4533 5576808
NO. 18-2-11302-0

PREG O'DONNELL & GILLET PLLC
901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

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and being otherwise fully advised in the premises, now, therefore, it is hereby

ORDERED that Defendants' Motion for Sanctions Regarding Deficient Bond and June 21, 2019 Hearing is hereby GRANTED. Plaintiff's attorney, Richard Simpson, is ordered to pay Defendants, through their attorneys, ~~\$5,000~~ ^{\$75,000} within ten days of the date of this order. *EM*

Findings of Fact and Conclusions of Law:

- Following the court's order requiring Plaintiff to post a supersedeas bond in the amount of the parties' \$500,000 settlement or deposit the settlement funds in the court registry, or some combination of the two, Plaintiff's Attorney, Richard Simpson, drafted a "bond" that was purportedly guaranteed by his law firm.
- Mr. Simpson's "bond" violated RAP 8.4 as well as RCW 19.72.020, which forbids an attorney from acting as a surety.
- The bond drafted and signed by Mr. Simpson was deficient and was not grounded in fact or in compliance with existing laws. Mr. Simpson did not "stop and think" before drafting and signing the deficient bond.
- On June 3, 2019, Defendants' counsel warned Mr. Simpson, via email, that they would pursue sanctions if he did not comply with the court's order requiring a bond. Defendants' attorneys noted that Mr. Simpson's "bond" did not appear to be backed by any proof of adequate collateral.
- Mr. Simpson, had another opportunity to conduct reasonable inquiry into the bond he created and whether it complied with relevant law when he drafted his opposition to Defendants' Motion for Deficient Bond and for Sanctions but Mr. Simpson again failed to conduct reasonable inquiry into the facts and relevant law before signing, filing and serving his opposition to Defendants' Motion for Deficient Bond and for Sanctions.

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- Mr. Simpson, at oral argument regarding Defendants' Motion for Deficient Bond and for Sanctions, declared that the \$500,000 in settlement funds was still all sitting in his law firm trust account. On that basis Mr. Simpson assured the court he could comply with the court's order and the opportunity he was given to cure the deficient bond by depositing the settlement funds into the court registry.
- The court warned Mr. Simpson at oral argument regarding Defendants' Motion for Deficient Bond and for Sanctions that sanctions would be awarded if he failed to deposit the \$500,000 in settlement funds into the court registry.
- Mr. Simpson failed to deposit the \$500,000 in settlement funds into the court's registry within seven (7) days of the Court's Order on Defendants' Motion for Deficient Bond and for Sanctions.
- Mr. Simpson's conduct at oral argument was an abuse of the legal system and an apparent delay tactic to avoid sanctions related to the deficient bond and Plaintiff's Opposition to Defendants' Motion regarding the same.
- For all of the reasons set forth above as well as based on the written record described herein and the oral argument of the parties, sanctions in the amount of ~~\$5,000~~ ^{25,000} are warranted. The court has considered whether a lesser sanction would be appropriate and determined that no lesser sanction would suffice in light of Mr. Simpson's repeated violations of CR 11, Mr. Simpson's lack of candor with the court, the fact previous sanctions did not curtail Mr. Simpson's behavior and based on the fact Plaintiff's lawsuit has already been dismissed with prejudice by stipulation of the parties.

EM

DATED this 25th day of July, 2019.



Honorable Edmund Murphy
Pierce County Superior Court Judge

FILED
DEPT. 8
IN OPEN COURT
JUL 26 2019
PIERCE COUNTY, WA
By Mark
DEPUTY

1 Presented by:

2 PREG O'DONNELL & GILLET PLLC

3
 4 By *Amber R. Hazelquist*
 5 Jeffrey W. Daly, WSBA #26915
 6 Amber R. Hazelquist, WSBA #41283
 Attorneys for Defendants Aletta Horton and
 MBK Housing, LLC

7 Copy Received; Approved as to Form;
8 Notice of Presentation Waived:

9 SIMPSON LAW PLLC

10 By *Reserved*
 11 Richard Simpson, WSBA# 53162
 Attorneys for Plaintiff Dominick Byrd

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of the foregoing document directed to the following individuals:

Counsel for Plaintiff Dominick Byrd:

Richard Simpson, Esq.
Simpson Law PLLC
539 Broadway
Tacoma, WA 98402

- Via Messenger
- Via Facsimile – (253) 295-5824
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email
with recipient's approval
richard@rmsimpsonlaw.com

DATED at Seattle, Washington, this 24th day of July, 2019.



Ana I. Todakonzie

Honorable Edmund Murphy
Hearing Date: October 25, 2019
Hearing Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s),

v.

ALETTA HORTON and MBK HOUSING,
LLC,

Defendant(s).

NO. 18-2-11302-0

DEFENDANTS' MOTION FOR ORDER TO
SHOW CAUSE RE: WHY PLAINTIFF'S
ATTORNEY RICHARD SIMPSON
SHOULD NOT BE ADJUDGED IN
CONTEMPT OF COURT AND REMEDIAL
SANCTIONS ORDERED AND MOTION
FOR CONTEMPT

I. RELIEF REQUESTED

Defendants, Aletta Horton and MBK Housing, LLC, respectfully request that the Court enter an order requiring counsel for Plaintiff Dominick Byrd, Mr. Richard Simpson, to show cause on the court's next available hearing date regarding why Mr. Simpson should not be adjudged in contempt of Court and remedial sanctions granted based on Mr. Simpson's failure to comply with the court's orders of March 15, 2019 and July 26, 2019 requiring Mr. Simpson to pay to Defendants sanctions in the amounts of \$5,000 and \$25,000, respectively. Defendants further

DEFENDANTS' MOTION FOR ORDER TO SHOW
CAUSE RE: WHY PLAINTIFF'S ATTORNEY RICHARD
SIMPSON SHOULD NOT BE ADJUDGED IN
CONTEMPT OF COURT AND REMEDIAL
SANCTIONS ORDERED AND MOTION FOR
CONTEMPT - 1
00567-4533 5593004
NO. 18-2-11302-0

PREG O'DONNELL & GILLETT PLLC

901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 move the Court for an Order finding Mr. Simpson in contempt of court and ordering remedial
2 sanctions against Mr. Simpson following Mr. Simpson's opportunity to be heard at the show cause
3 hearing.¹

4 II. STATEMENT OF RELEVANT FACTS

5 On March 15, 2019, following oral argument on Defendants' Motion to Enforce Settlement
6 Agreement and for CR 11 Sanctions, this Court entered an order granting Defendants' motion
7 and ordering Plaintiff's Counsel Mr. Simpson to pay \$5,000 in sanctions within ten days of the
8 court's order. *See Decl. Hazelquist, Ex. A, Court's Order of March 15, 2019.* Nearly six months
9 have passed and, in defiance of the Court's order, Mr. Simpson has failed to pay Defendants the
10 \$5,000 in sanctions ordered by the Court. *Id.* at ¶ 3.

11 On July 26, 2019, following oral argument on Defendants' Motion for Sanctions Regarding
12 Deficient Bond and June 21, 2019 hearing, this Court entered an order granting Defendants'
13 motion and ordering Plaintiff's counsel Mr. Simpson to pay \$25,000 in sanctions within ten days
14 of the court's order. *See Decl. Hazelquist, Ex. C, Court's Order of July 26, 2019.* Over two months
15 have passed and, in defiance of the Court's order, Mr. Simpson has failed to pay Defendants the
16 \$25,000 in sanctions ordered by the Court. *Id.* at ¶ 5.

17 Plaintiff filed a Notice of Appeal of the Court's March 15, 2019 Order on April 15, 2019.
18 *See Decl. Hazelquist, Ex. C, Notice of Appeal.* That appeal has been dismissed by the Appellate
19 Court as a result of plaintiff's failure to comply with this Court's order requiring deposit of funds
20 with the court pending resolution. *See Decl. Hazelquist, Ex. D, Ruling Dismissing Appeal.* Mr.
21 Simpson agrees with Defendants that the appeal is terminated. On September 24, 2019, Mr.

22
23 ¹ A proposed Order adjudging Mr. Simpson in contempt and awarding additional remedial sanctions against
24 Mr. Simpson and in favor of Defendants is attached to the Declaration of Amber R. Hazelquist in support
of this motion as Exhibit G.

25 DEFENDANTS' MOTION FOR ORDER TO SHOW
CAUSE RE: WHY PLAINTIFF'S ATTORNEY RICHARD
SIMPSON SHOULD NOT BE ADJUDGED IN
CONTEMPT OF COURT AND REMEDIAL
SANCTIONS ORDERED AND MOTION FOR
CONTEMPT - 2
00567-4533 5593004
NO. 18-2-11302-0

PREG O'DONNELL & GILLETT PLLC

901 FIFTH AVE., SUITE 3400
SEATTLE, WASHINGTON 98164-2026
TELEPHONE: (206) 287-1775 • FACSIMILE: (206) 287-9113

1 Simpson followed up on his bar complaint against Defendants' counsel Mr. Daly by notifying the
2 Washington State Bar Association that the litigation regarding Mr. Byrd versus Ms. Horton and
3 MBK Housing had concluded. *See Decl. Hazelquist, Ex. E, Mr. Simpson's letter to the WSBA.*
4 Mr. Simpson's letter to the WSBA indicates clearly that Mr. Simpson does not intend to comply
5 with this Court's March 15 and July 26, 2019 Orders. Although it is not required, Defendants,
6 through counsel, have repeatedly given Mr. Simpson additional opportunities to pay the awarded
7 sanctions and have warned Mr. Simpson that if he failed to do so they would file the present
8 motion. *See Decl. Hazelquist, Ex. F, Email Correspondence, July 26, 2019 – September 23, 2019.*
9 Mr. Simpson's responses to Defendants' counsel's messages indicate a lack of any intent to pay
10 the sanctions in clear contempt of this Court's Orders. *Id.*

11 III. STATEMENT OF ISSUES

12 Whether counsel for Plaintiff Dominick Byrd, Mr. Richard Simpson, should be ordered to
13 show cause on the Court's next available hearing date regarding whether the order attached to
14 the declaration of Amber Hazelquist as **Exhibit G** adjudging Mr. Simpson in contempt and
15 ordering additional remedial sanctions should be granted based on Mr. Simpson's failure to
16 comply with the court's orders of March 15, 2019 and July 26, 2019 requiring Mr. Simpson to pay
17 to Defendants sanctions in the amounts of \$5,000 and \$25,000, respectively.

18 Whether Mr. Simpson should be adjudged in contempt and remedial sanctions granted as
19 set forth in the order attached to the declaration of Amber Hazelquist as **Exhibit G** following Mr.
20 Simpson's opportunity to be heard at a show cause hearing.

21 IV. EVIDENCE RELIED UPON

22 Defendants rely on the pleadings and papers on file with the court and the declaration of
23 Amber R. Hazelquist in support of this motion with attached exhibits.
24

25 DEFENDANTS' MOTION FOR ORDER TO SHOW
CAUSE RE: WHY PLAINTIFF'S ATTORNEY RICHARD
SIMPSON SHOULD NOT BE ADJUDGED IN
CONTEMPT OF COURT AND REMEDIAL
SANCTIONS ORDERED AND MOTION FOR
CONTEMPT - 3
00567-4533 5593004
NO. 18-2-11302-0

PREG O'DONNELL & GILLET PLLC

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V. ARGUMENT & AUTHORITY

1 "The Court's power to censure contemptuous behavior flows from both statute and the
2 inherent power of the court." *State v. Breazeale*, 144 Wn.2d 829, 842, 31 P.3d 1155 (2001) (citing
3 *Marriage of Nielsen*, 38 Wn. App. 586, 588, 687 P.2d 877 (1984)). "... (1) Contempt of court"
4 means intentional: ... (b) Disobedience of any lawful judgment, decree, **order**, or process of the
5 court...". RCW 7.21.010 (emphasis added). "Civil show cause procedures are an appropriate
6 means of securing compliance with a court order." *Breazeale*, 144 Wn.2d at 842 (citing *Rainier*
7 *Nat'l Bank v. McCracken*, 26 Wn. App. 498, 515, 615 P.2d 469 (1980)). "A trial court's finding of
8 contempt will not be disturbed on appeal as long as it is supported by substantial evidence in the
9 record." *In re of Rapid Settlements, Ltd's*, 189 Wn. App. 584, 601, 359 P.3d 823 (2015).

10 Pursuant to RCW 7.21.010, "A judge ... of ... the superior court may impose a sanction for
11 contempt of court under this chapter." Pursuant to RCW 7.21.030(2), "If the court finds that the
12 person has failed or refused to perform an act that is yet within the person's power to perform,
13 the court may find the person in contempt of court and impose one or more of the following
14 remedial sanctions ...". Included among the specified sanctions are fees in an amount of up to
15 \$2,000 per day and imprisonment so long as it serves a coercive purpose. See RCW 7.21.030(2).
16 "Remedial sanctions" may be imposed for the purpose of coercing performance when the
17 contempt consists of the omission or refusal to perform an act that is yet in the person's power to
18 perform (RCW 7.21.010(3)) and "punitive sanctions" may be imposed to punish a past contempt
19 for the purposes of upholding the authority of the court. RCW 7.21.010(2).

20 "[M]inimal notice has satisfied due process requirements for a valid judgment of contempt
21 of court". *Burlington v. Consolidated Mines and Smelting Co., Ltd.*, 106 Wn.2d 328, 332, 722 P.2d
22 67 (1986). In *Burlington*, the Washington State Supreme Court favorably cited the United States
23 Supreme Court's decision, *Hovey v. Elliott*, 167 U.S. 409 (1897) that emphasized the importance
24

25 DEFENDANTS' MOTION FOR ORDER TO SHOW
CAUSE RE: WHY PLAINTIFF'S ATTORNEY RICHARD
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CONTEMPT - 4
00567-4533 5593004
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1 of notice and an opportunity to be heard to validate a contempt order. *Id.* The *Burlington* court
2 went on to uphold historical case law finding that orders to show cause satisfy the notice
3 requirement of due process related to orders of civil contempt. *Id.* at 332-333.

4 "A civil contempt order must include a purge clause under which a contemnor has the
5 ability to avoid a finding of contempt and/or incarceration for noncompliance." *Interest of Rebecca*
6 *K.*, 101 Wn. App. 309, 314, 2 P.3d 501 (2000). (citing *Shafer v. Bloomer*, 94 Wn. App. 246, 253,
7 973 P.2d 1062 (1999)). Ordinarily the "purge clause" should require compliance with the original
8 order that was violated.

9 **VI. CONCLUSION**

10 In the present matter, there is substantial evidence to support a finding Mr. Simpson is in
11 Contempt of the Court's March 15, 2019 and July 26, 2019 Orders. Mr. Simpson's email
12 correspondence with defense counsel as well as his letter to the Washington State Bar each
13 indicate intentional and willful failure to pay the sanctions ordered by this Court. To meet the
14 requirements of due process as set forth in *Burlington, supra*, Defendants respectfully request
15 that the Court grant the attached Order to Show Cause directed to Mr. Simpson notifying Mr.
16 Simpson of the charge of contempt and giving him an opportunity to be heard prior to granting
17 Defendants' proposed Order Adjudging Mr. Simpson in Contempt and Granting Remedial
18 Sanctions Against Mr. Simpson and in Favor of Defendants.

19 DATED this 16th day of October, 2019.

20 PREG O'DONNELL & GILLETT PLLC

21 By Amber R. Hazelquist
22 Jeffrey W. Daly, WSBA #26915
23 Amber R. Hazelquist, WSBA #41283
24 Attorneys for Defendants Aletta Horton and MBK
Housing, LLC

25 DEFENDANTS' MOTION FOR ORDER TO SHOW
CAUSE RE: WHY PLAINTIFF'S ATTORNEY RICHARD
SIMPSON SHOULD NOT BE ADJUDGED IN
CONTEMPT OF COURT AND REMEDIAL
SANCTIONS ORDERED AND MOTION FOR
CONTEMPT - 5
00567-4533 5593004
NO. 18-2-11302-0

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of the foregoing document directed to the following individuals:

Counsel for Plaintiff Dominick Byrd:

Richard Simpson
Simpson Law PLLC
539 Broadway
Tacoma, WA 98402

- Via Messenger
- Via Facsimile – (253) 295-5824
- Via U.S. Mail, postage prepaid
- Via Overnight Mail, postage prepaid
- Via Court E-Service or email with recipient’s approval
richard@rmsimpsonlaw.com

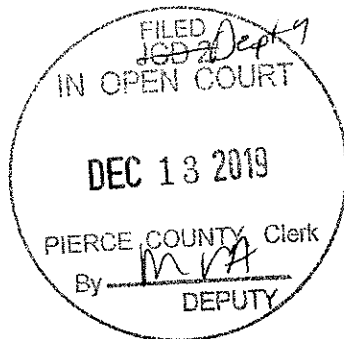
DATED at Seattle, Washington, this 10th day of October, 2019.



Ana I. Todakonzie

DEFENDANTS' MOTION FOR ORDER TO SHOW CAUSE RE: WHY PLAINTIFF'S ATTORNEY RICHARD SIMPSON SHOULD NOT BE ADJUDGED IN CONTEMPT OF COURT AND REMEDIAL SANCTIONS ORDERED AND MOTION FOR CONTEMPT - 6
00567-4533 5593004
NO. 18-2-11302-0

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

DOMINICK BYRD,

Plaintiff(s) ,

vs.

ALETTA HORTON,

Defendant(s)

Cause No: 18-2-11302-0

SHOW CAUSE ORDER

(OR)

This matter having come before the Court on December 13, 2019 for attorney Richard Simpson to show cause why he should not be held in contempt the Court having heard oral argument of counsel, it is hereby ordered that attorney Richard Simpson is in contempt of the Court's orders regarding sanctions against him in the amounts of \$5,000 and \$25,000. Mr. Simpson shall pay those sanctions by January 12, 2020. If he fails to do so, remedial sanctions of \$2,000 per day will accrue until full payment is made. If payment is not made by February 11, 2020, a bench warrant will issue for Mr. Simpson's arrest.

DATED this 13th day of December, 2019.

JUDGE EDMUND MURPHY

Pretext reserved for appeal and/or discretionary review

Attorney for Plaintiff WSBA# _____

Attorney for Defendant WSBA# 210915

Jeffrey W. Daly, WSBA #26915
Amber R. Hazelquist, WSBA #41283
PREG O'DONNELL & GILLETT PLLC
901 Fifth Avenue, Suite 3400
Seattle, WA 98164
(206) 287-1775

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

DOMINICK BYRD,

Petitioner,

v.

ALETTA HORTON and
MBK HOUSING, LLC,

Respondents,

and

RICHARD SIMPSON, an
attorney,

Petitioner.

CASE NO. 100456-7

DECLARATION OF
SERVICE

The undersigned declares under penalty of perjury
under the laws of the State of Washington that on this day

the undersigned caused to be served in the manner indicated below, a copy of the following documents: (1) Respondents' Answer to Petition for Review; (2) Appendix; and (3) Declaration of Service, directed to the following individuals:

Via Electronic Service and First Class Mail

Counsel for Petitioners:

Richard Simpson, Esq.
Simpson Law PLLC
539 Broadway
Tacoma, WA 98402

Dated at Seattle, Washington, this 16th day of February, 2022.



Ana I. Todakonzie
Legal Assistant

PREG O'DONNELL & GILLETT

February 16, 2022 - 2:04 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,456-7
Appellate Court Case Title: Dominick Byrd v. Aletta Horton, et al.
Superior Court Case Number: 18-2-11302-0

The following documents have been uploaded:

- 1004567_Answer_Reply_20220216135343SC337657_3311.pdf
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- jdaly@poglaw.com
- richard@rmsimpsonlaw.com
- sballard@pregodonnell.com

Comments:

Respondents' Answer to Petition for Review; Appendix; and Declaration of Service.

Sender Name: Ana Todakonzie - Email: atodakonzie@pregodonnell.com

Filing on Behalf of: Amber Rae Hazelquist - Email: ahazelquist@pregodonnell.com (Alternate Email:)

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Seattle, WA, 98164
Phone: (206) 287-1775

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