92339-6

IN THE STATE OF WASHINGTON SUPREME COURT

Court of Appeals Division One No. 71894-1) Supreme Ct 92339-6

FRANKLIN R. LACY Plaintiff-Appellant

v.

RICHARD RASMUSSEN, BETTY J. RASMUSSEN, RASMUSSEN WIRE ROPE & RIGGING CO., RASMUSSEN EQUIPMENT CO., BILL JOOST, LANDMANN WIRE PRODUCTS, WEISNER, INC., WEISNER STEEL PRODUCTS, INC.

Defendants-Respondents

On Appeal from San Juan Superior Court, Cause No. 10-2-05171-7

APPELLANT FRANKLIN R. LACY, IN PRO SE, REPLY TO RESPONDENTS RICHARD RASMUSSEN'S, ET. AL. ANSWER TO PETITION FOR REVIEW

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DISPUTE OF INTRODUCTION

The dock system was actually installed in 1996. The dock floats along with a high clearance manufacturing building and the manufacturing equipment were purchased and/or built several years before 1996. The extended delay for the dock installation involved getting a dock permit from the County of San Juan. The requirements were very involved.

Appellant/Plaintiff (AP) did not dare sell his unique dock system through dock builders mainly because of the shackle bolts. They were thought to be 100% releasing by unscrewing from the tidal changes, storms, and the wake of passing boats within just 7 months of their having been newly installed. This caused all the 10,000 pound and 15,000-pound dock floats to also release within 7 months and breakup on the shoreline rocks and damage the dock ramp pier and ramp. It was learned on June 20, 2009 that all the shackles had manufacturing defects. The 20 million dollars claimed is for approximately $126,000 annual costs to solve the problem including rebuilding costs for the dock floats plus interest, three serious injuries when a loose 10,000-pound dock float ran over AP, and ruining AP's unique dock system licensing business. AP did not dare license his patent to be built on other properties with these

shackle problems because there would be lawsuits due to shackle releasings. Defendants Rasmussen (DR) appear to be blaming AP for not licensing his dock system to others when they are the reason for AP not being able to do it.

DR is trying to hold AP to statutes of limitation when the three disabling injuries toll the statutes per RCWA 4.16.260. Two of the disabling injuries caused by a loose dock float is still on-going. Further the fraudulent concealment of the fact that DR was selling 100% defectively manufactured 1-inch-thick stainless steel shackles voids the alleged unreadable flimsy paper reverse side contract with ink from the front side cash receipt bleeding through. DR is trying to switch this case to RCWA 4.16.190 which applies to a mental incapacitation when the physical disabling injuries of RCWA 4.16.260 apply for multiple injuries causing disablement. Statutes must receive equal importance. So a non-applicable statute should not be substituted for an applicable statute. RCWA 4.16.260 does not have the restriction of mental incapacitation. Possibly the reason behind it is the on-going accumulation of medical expenses and deteriorated life style resulting.

AP's consequential damages result from injuries; costs of repeatedly rebuilding 10,000+ pound dock floats; resetting dock

floats only available during the few partial days in summer when high and low tides are the same; and loss of income for licensing AP's unique dock system. This is when divers can work extensively without being stopped by treacherous currents. The tax returns showing business loses for additional years are enclosed and marked Exhibit 'B'. They were in Washington State at the time of AP's Petition for Review. Please include them in appendix 'S', in Exhibit 'T', substituting year 2006 and 2008 that are already there with SS# for these tax forms with the SS# redacted. They were reluctantly provided to DR as part of answers to interrogatories and production of documents. Numerous pictures showing damages were also included and briefed. The lawsuit applies to all defendants including involved individuals.

AP is arguing that the CR56 explanation and claimed application through case law misleads all pro se litigants into believing that pro se litigants need only provide minimal affidavits, and they will be believed so that the case can go to trial for a jury to decide the liability and damages. Please see Westlaw Next's write up of CR56 together with case law that has bold brackets (Appendix 'Q' of AP's Petition for Review). In the 17 short days to respond (28 days less 17 days) including weekends and holidays, Pro Se

litigants are surprised with a Motion for Summary Judgment. Without the help of additional pro se litigant information as an addition to the website rules, pro se litigants don't know what has to be done, they are denied due process under the U.S. Constitution as a result.

The matter of this question of due process affects all pro se litigants; therefore, it is a matter of public interest unless the courts want to take the position that pro se litigants should hire lawyers and not be afforded the constitutional right to have the information necessary to represent themselves. Who has a more profound interest in their case than pro se litigants?

The "fundamental issue" in this case is that AP felt quite sure that the shackles themselves were not failing. He reasonably felt the shackle parts were intact, but they were unscrewing since 2003. AP alleges to believe otherwise is to believe that DR are allegedly crooks who were deliberately selling 100% defectively manufactured alleged top quality 1-inch-thick stainless steel shackles. All the while AP was informing DR of the alleged unscrewing problem, and DR came up with products to prevent this from happening. AP's dock lines, shackles, and dock floats became thoroughly covered with thick vegetation and muscles quickly

following installation of the components. In fact, the whole waterway bottom is thick with various sizes of vegetation and anemones. When the lines let loose, they would be impossible to locate. No shackles could be found. The dock lines were under tension, so the shackle parts went shooting away. They could not be found to show what was happening. Please see Exhibit 'A', which shows the underside of one float corner. There are three 6-inch diameter stainless steel eyebolts under each dock float corner. The thick vegetation on the eyebolts and dock float bottom make them impossible to see in this underwater photograph. With only 5 days a year in summer with partial high-to-low calm tides for safe, no-current diving, your Honors can realize the impossible task of learning what is happening. No one was more anxious to determine the cause of the problem than AP with the life of his patent ticking away. As the above shows there is everything unique about AP's claim. It is absolutely unfair to impose statutes of limitation on AP even if he wasn't disabled. What would your Honors have done to justify a lawsuit before June 20, 2009? It is neither fair nor just. DR is continuing to sell these defective shackles even after the September 2013 depositions. AP alleges that this is because DR

only figures that they have to refund the purchase price if they are sued. This allegedly is wanton disregard for public safety.

The fraudulent concealment of the fact that DR sold AP 136 alleged top quality 1-inch-thick stainless steel shackles from 2002 to 2008 that were 100% with serious manufactured defects makes the alleged contract void and tolls the statute of limitations. Although the consequential damage clause was in the unreadable lower right quadrant of the contract, fraudulent concealment voids it.

In the last paragraph of DR's introduction, DR refers to RCWA 4.16.080(b), and there is no RCWA 4.16.080(b). Actually RCWA 4.16.080 is not applicable to alleged written contracts. Since DR maintains that there is a written contract and the appeals court affirmed over AP's objections, this RCWA 4.16.080 would not apply. The 6-year statute of limitations of RCWA 4.16.090 would apply except for the overriding tolling of RCWA 4.16.260 and others already argued in AP's Petition for Review.

DISPUTED ARGUMENTS

A. Rule of Appellate Procedure 13(b) (1), (2), (3), (4) apply to AP's case.

(1) There is case law listed in AP's petition for review and herein to meaningfully argue this matter.

(2) Please see case law cited including below.

(3) There is case law in AP's petition for review and herein to meaningfully argue this matter. Please also see the Dispute of Introduction above. Arguments therein won't be repeated.

(4) Please see the Dispute of Introduction above for arguments. This does involve substantial public interest. For example, not knowing that highlights can be of a color reproducible on black and white copies alone makes clerks papers reproduced without pages highlighted; whereas opposing counsel used highlights that were reproduced by the clerk and showed on black and white copies. AP learned in the past to only highlight using yellow. That alone was a huge disadvantage. Pro se litigants need the write up similar to what AP is proposing out of considerations of justice. Florida does have some court website instructions to pro se litigants, so it is entirely reasonable and just.

B. Regarding CR56, please also see Dispute of Introduction above. The appeals court is in conflict with the case law cited.

"...Where rule of court is inconsistent with procedural statute, power of Supreme Court to establish procedural rules to state courts is supreme..." Headnote 3

The statutes cited are quite clear, and the ruling of this appeals and trial court appear to be in conflict with the statutes.

Petrarca v. Halligan, Supreme Court of Washington, En Banc, 83 Wash.2d 773 522 P.2d 827, Mat 29, 1974, HN 3

...[13] para. 80 "When a Washington Court Rule is substantially similar to a present Federal Rule of Civil Procedure, we may look to federal decisions interpreting this rule for guidance..."

It is hoped this court will do the same; whereas the appeals court did not concerning prevailing statutes and federal pro se treatment of litigants. Some case law shows appeals courts take the statements of pro se litigants as evidence of triable material fact. This would be more in keeping with the federal standards for treatment of pro se litigants.

Washburn v. City of Federal Way, Court of Appeals, Div. 1, 169 Wash.App. 588 283 P.3d 567, July 23, 2012, [13] para 80

"The basic purpose of the rules of civil procedure is to eliminate or at least to minimize technical miscarriages of justice inherent in archaic procedural concepts once characterized by Vanderbilt as 'the sporting theory of justice.'" *Curtis Lumber Co. v. Sortor*, 83 Wash.2d 764, 767, 522 P.2d 822, 823 (1974). **"Thus, wherever possible, the rules of civil procedure should be applied in such a way that substance will prevail over form."**

Cf. *Curtis Lumber Co. v. Sortor*, supra; cf. also *782 *Moore v. Burdman*, 84 Wash.2d 408, 526 P.2d 893 (1974); *Malott v. Randall*, 83 Wash.2d 259, 517 P.2d 605 (1974).

Taking the embodiment of what AP has submitted as a pro se litigant, it becomes clear that the appeals court is not doing this.

"...A chief purpose of the rules of civil procedure is "to eliminate procedural traps."

CalPortland Co. v. LevelOne Concrete LLC, 180 Wash.App. 379 321 P.3d 1261, March 25, 2014

By not reading AP's evolving evidence and by calling it frivolous so as to penalize AP with the further burden of opposing attorney fees, the appeals court is demonstrating their disdain for this pro se litigant and clearly dissuading other pro se litigants from the justice system.

CR56(d) states, "...and directing **such further proceedings** in the action **as are just**. Upon the trial of the action, **the facts so specified shall be deemed established**, and the trial shall be conducted accordingly." (boldface underline added) This tells AP in pro se along with other statements of what is required. All that is needed is an affidavit based upon direct knowledge of the facts, and the case will be set for trial. "...**The Facts So Specified**..."

CR56 (f) states, "When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other order as is just." This was not done. Nowhere are expert witness testimony mentioned, so AP in pro se logically deduced that it wasn't necessary. That is why pro se litigants need an article on the court website explaining the importance of providing the most convincing evidence available.

The U. S. Supreme Court has generally approved the concept of summary judgment; however, this is with civil rule guidelines, which need to be made less deceptive for pro se litigants.

In DR's case law Anderson v. Liberty Lobby. Inc., Headnote 2 "Substantive law" (statutes) "will identify which facts are material for purposes of summary judgment, as only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment; ..." So the statutes referenced by AP are material facts that allow the trial to proceed. To claim otherwise denies AP of any chance for justice

under these unique set of circumstances where the below standard shackles are poorly manufactured and impossible to find in the dense under salt water vegetation which is also growing on the shackles and dock lines. In Headnote 4, "Summary judgment will not lie if the dispute about a fact is "genuine," i.e., if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Also please see Headnotes 5 and 7.

In DR's case law examples, confusion is being raised. AP is not asking the court to pay for an attorney for him. He is respectfully asking for what he feels is common sense. He is asking the court to clarify what is expected of pro se litigants through a web page on the court's website indicating court rules. To not do so is denying pro se litigants due process, which is very much the current situation.

In DR's case law Trimble v. Washington State University, analysis, paragraph 1, "The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion." Quoting Clements, 121 Wash.2d at 249, 850 P.2d 1298 (citing Wilson v. Steinbach, 98 Wash.2d 434, 656 P.2d 1030 (1982)).

C. Please see Dispute of Introduction herein for pertinent arguments.

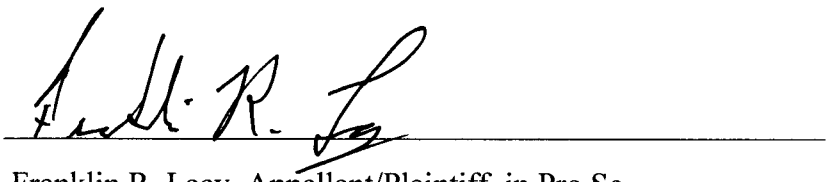
D. DR is arguing the wrong statutes. RCWA 4.16.260 and others already argued are pertinent to toll the statutes of limitations and time barring. This was already argued. Perhaps the courts were raising the level for review by allowing tolling that involves two or more disabilities because of the on-going health expenses and handicap costs, which, in this case, are progressive in time. RCWA 11.88.010 is just definitions of incapacitation for setting up guardianship. It does not apply, and it has no bearing on this case. Defendants are not entitled to attorney fees. The lawsuit is not frivolous, and the alleged contract is void due to fraudulent concealment.

CONCLUSION

There is no way that AP could know that large chunks of the shackles were falling off within 7 months of their being installed unused. With the dense vegetation growing on all components including the dock lines and alleged 1-inch-thick stainless steel top quality shackles and on the waterway bottom, there is no way that the shackles can be found when they sling shot away under tension from the stretchy 1-inch double braided dock lines. Throughout the year there are only 5 days occurring during the summer when the new dock lines and unused

shackles can be installed after repairing heavily damaged dock floats. The currents any other time are just too strong for diving for the length of time needed for repair. The fact that inferior quality manufactured shackles were sold by DR 100% of the time speaks loudly to the character of Defendants. Statutes cited allow tolling of the statute of limitation and time barring. CR56 is deceptive to pro se litigants as to what is needed to overcome summary judgment motions. This denies due process under the U. S. Constitution. Appellant/Plaintiff in pro se respectfully requests denial of the motion for summary judgment and he requests that the trial be allowed to proceed. There are significant material disputed facts that should be brought to trial. They are stated in Plaintiff's Request to Amend his Complaint, which was timely filed at the time of the March 2014 Summary Judgment hearing.

Dated this 27th day of October, 2015.



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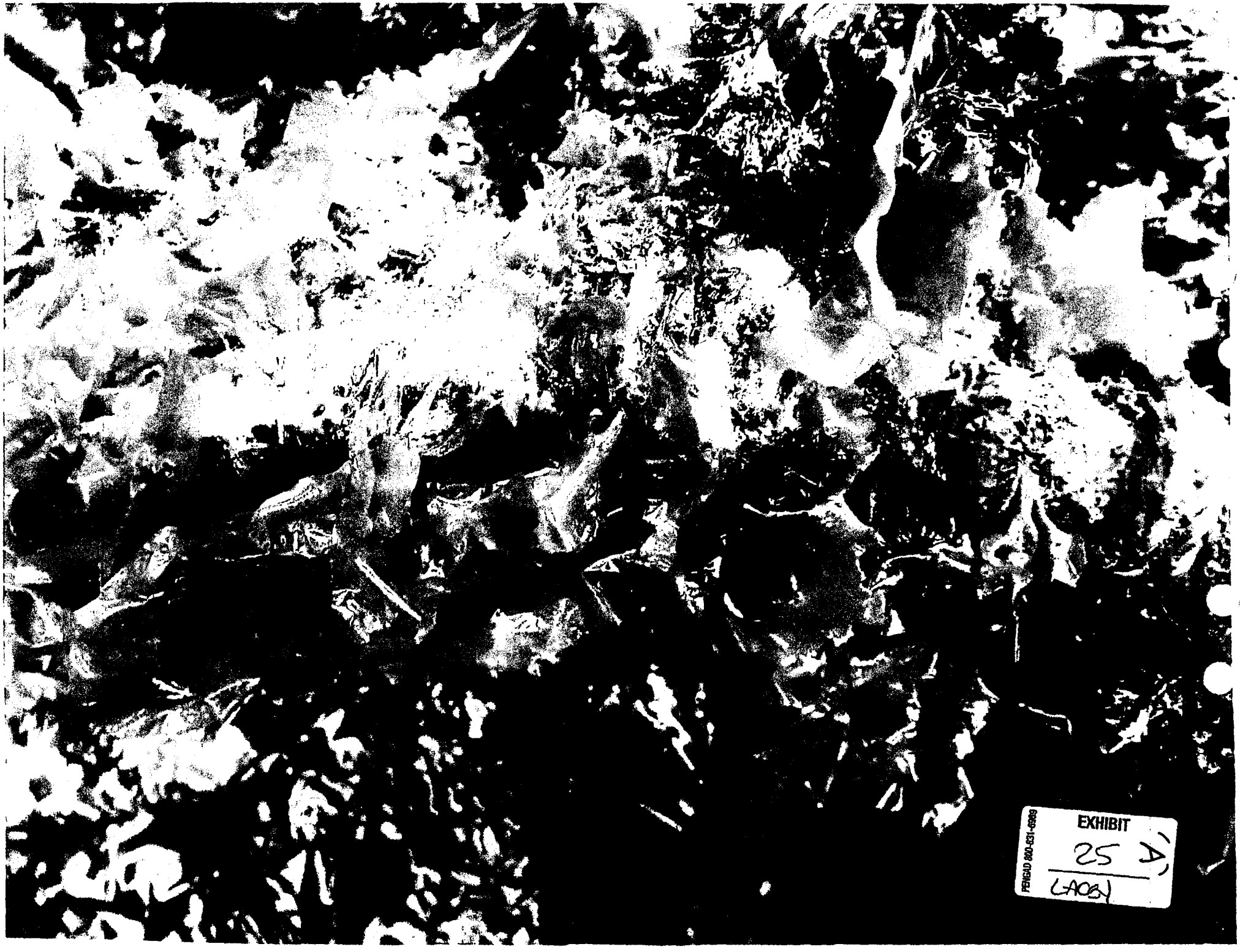
EXHIBIT
25 A)
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PROOF OF SERY ICE

I, Richard Aarons, am over 18 years of age and have no interest in this case. I hereby certify under penalty of perjury under the laws of the State of Washington that on this day I caused to be served in the manner indicated a true and accurate copy of

APPELLANT FRANKLIN R. LACY, IN PRO SE, REPLY TO RESPONDENTS RICHARD RASMUSSEN'S, ET. AL. ANSWER TO PETITION FOR REVIEW

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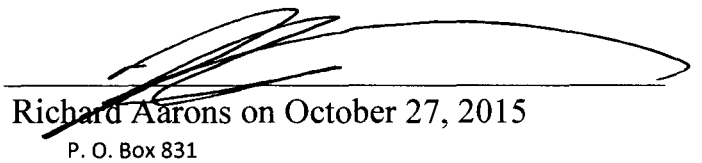
October 27, 2015



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