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SUPREME COURT NO. 96044-5

COURT OF APPEAL NO. 76501-9-I

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IN THE SUPREME COURT OF  
THE STATE OF WASHINGTON

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NORDIC SERVICES, INC.  
Respondents

*(Plaintiffs / Appellee)*

v.

Endre' Glenn  
Petitioner  
(Defendants / Appellants)

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REPLY TO ANSWER TO PETITION FOR REVIEW

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## **II. INTRODUCTION**

NORDIC Services replaced water damaged carpet in the family room basement caused by a defective water heater. NORDIC Services Construction Services agreement required the contractor to perform all work. CP 50-51. This would include preparation, i.e. moving furniture out of the area, and moving the furniture back into the family room. If NORDIC replaced carpet in Lake Washington School District for Junior or High School, certainly they would bring sufficient personnel to move the furniture than impose that liability on the School District staff. If one of his own employees had a bad back, certainly they would not force him to move furniture at a job site, or participate in any activity that would exasperate the injury.

The statement of work prepared by John Rossnagle, project manager, NORDIC Services identified the moving of these contents in the family room by other. CP 340. The work estimate did not define the moving of the contents by the homeowner, Glenn. NORDIC's Attorney, Steve Hanson believes NORDIC fulfilled all its obligations but they did not. The homeowner duly notified of NORDIC Services personnel of

medical condition, impaired shoulder which they failed to respond and bring sufficient personnel to move the furniture. CP 337, CP 355, CP 278.

Pursuant RCW 64.50.50, homeowner identified construction defects to NORDIC services in the “Company Evaluation”, dated November 1, 2014 and the addressed a letter May 5, 2014 directly to the CEO David Omli about the personal injury in an effort to reach a resolution. The exposed CAT5E cabling in an entry way created a safety hazard which someone could sustain an injury by tripping over the cabling. NORDIC Services either don’t know how to properly install the Ethernet cable or lack understanding of inherent risk of exposed cable.

Mr. Glenn attempted to resolve the dispute by signing NORDIC’s structured settlement agreement on June 25, 2015 presented by Kristie Baines, NORDIC’s business manager. He retained attorney Samantha Arango to assist in the negotiations but attorney Steve Hansen rejected the agreement. Just prior to the trial court entering default, Mr. Glenn retained Attorney Ray Brooks personal injury attorney to answer the complaint. CP 23 -32. Attorney Arango, and Ray Brooks filed a letter of withdrawal with the court, CP 61 – 63, and CP 58 – 59;. Ray Brook’s withdrawal became effective October 30, 2015, and November 5, 2015.. Since Ray Brooks and Samantha Arango were attorney of record, NORDIC’s attorney Steve Hansen could have sent either one a copy of his

January 21, 2016 letter requesting the selection of arbitrator CP 110 well before the March 4, 2016 hearing CP 98.. Per CR 71, and RCW 2.44.050.

When an attorney is changed, as provided in RCW 2.44.040, written notice of the change, and the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he shall be bound to recognize the former attorney.

CR 71(c)(1) also provides that the attorney must specify a date for the withdrawal to become effective that is at least 10 days after service of the notice of intent to withdraw. RCW 2.44.050 states that opposing counsel must recognize the withdrawing attorney until notice of withdrawal is received. Reading CR 71 and RCW 2.44.050 together, the withdrawal is effective on the date specified in the notices of intent to withdraw. Reference *Jones v. Home Care of Washington, Inc.*, 152 Wash. App. 674, 681, 216 P.3d 1106, 1109 (2009).

NORDIC's attorney Steve Hansen inability to comply with statutory provision for initiating arbitration and failure to serve counsel of record regarding the selection of an arbitrator significantly prejudiced the homeowner's case.

Attorney Steve Hansen, NORDIC Services, and VAN WILD Carpeting ignored subpoena, court order to produce documents, denied the defendant the opportunity to present evidence to support his claim. CP 587 – 589, The trial court rewarded them by granting sanctions against the defendant, Mr. Glenn for their misconduct. CP 428 – 429. The arbitrator refused to honor his discovery order granting the homeowner the right to

dispose key witnesses Rob Tooley, VAN WILD Carpeting and John Rossnagle, NORDIC Services. CP 137 – 138. He granted NORDIC the opportunity to complete all the discovery outlined in his June 14, 2016 Discovery Order CP 607; rescheduling the September 28, 2016 hearing, CP 611-612, and presenting an undeclared expert witness CP 609. On July 11, 2016 homeowner Mr. Glenn appeared for 8 hours of depositions at the Law offices of Attorney Hansen, Marysville Washington, 40 miles from his home; deposed 4 hours by Attorney Steve Hansen, and another 4 hours by Attorney Wendy Kent. Arbitrator denied him the opportunity to depose his witnesses. Neither the trial court nor arbitrator considered imposing sanctions on VAN WILD or granting the homeowner more time to prepare for the hearing in light of VAN WILD refusal to answer the subpoena, and court order CP 620. VAN WILD never responded to the subpoena and court order. Steve Hansen subsequently obtained the discovery. Defendant Glenn had no rights; neither the trial court nor arbitrator respected his right to a fair hearing. The Court does not know if Attorney Steve Hansen tampered with the evidence, and removed critical documents. VAN WILD failure to respond to court order, compromised the integrity of this information CP 434 – 436.

Local Civil Rule CR 37 requires the court to impose sanctions on a party for failure to make discovery. **The rule provides sufficient time for a party to serve discovery request early enough such that**

**responses will be due and depositions will be taken before the cutoff date.**

A party's disregard of court order without reasonable excuse or justification is deemed willful. CR 37(b) *Magana v. Hyundai Motor Am.*, 167 Wash. 2d 570, 220 P.3d 191 (2009). In this case Hyundai willfully violated the discovery rules. The Court of Appeals held 'it was reasonable for the court to conclude that Hyundai's failure to timely disclose similar seat back failure was willful'. **The trial court held "Reasonable opportunity to conduct discovery is a fundamental part of due process of law"**. Hyundai knew about these claims but willfully failed to disclose them thereby prejudicing Magana ability to prepare for trial.... Supreme Court upheld the Superior Court default judgment against the manufacturer based on finding of willful discovery violations, reversing Court of Appeals decision.

*In Behr Smith v. Behr Process Corp.*, 113 Wash. App. 306, 325, 54 P.3d 665, 676 (2002) the trial court found the plaintiffs were substantially prejudiced in preparing for trial because " 'the discovery violations complained of suppressed evidence that was relevant, because it goes to the heart of the plaintiffs' claims, and it supports them. Only a default judgment would adequately remedy the harm to the class and also punish Behr. The Court entered default judgment against Behr. Court of Appeals Div 2 held (1) class certification was proper; (2) default judgment against manufacturer was the appropriate sanction for the discovery violation; and (3) judge was not required to recuse himself after realizing that he had eaten Easter dinner at the home of one of the consumers' homes.

The arbitration briefs and prehearing statements were due the same day, October 14, 2016 Steve Hansen obtained discovery from VAN WILD, e-mail correspondence and address of former employee Rob Tooley CP 114. Mr. Glenn contacted VAN WILD early June 16, 2016 3:48 PM about his request for discover but they did not respond. He also contacted Mr. Rob Tooley, June 16, at 4:49 PM. Rob refused to participate in the deposition or testify in this matter. He stated the matter



is between Mr. Glenn and NORDIC Services. Good luck but he's not involved. CP 225-226. VAN WILD failure to comply with court order was willful, and deliberate act to substantially prejudice the homeowner's Glenn case.

Though the homeowner raised these issues in his "Motion for Emergency Relief", the trial court denied the motion, and subsequently struck the trial de novo without a hearing denying the defendant opportunity to show just cause for his absence. CP 587 – 592. Trial court confirmed the arbitration award.

For the last 12 months prior to confirmation of the award, the litigants communicated by e-mail for the arbitration proceedings, except for HIPPA protected information<sup>1</sup>. Steve Hanson never sent opposing party an e-mail of his objection to the trial de novo nor his motion to confirm the arbitration award instead he places a copy in US Mail when the parties have been communicating by e-mail for the past 12 months.

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<sup>1</sup> NORDIC's Attorney Wendy Kent violated HIPPA 45 CFR 164.512(D)(1) by not sending a qualified protective order 45 CFR 164.512 (e) (1) (iv) or a written statement the time for patient to raise objections to the court has elapsed as required by 45 CFR 164.512.(E)(1)(iii)(C). She sent blanket requests for medical records seeking privileged information between patient and physician for records unrelated to the claims. The parties agreed to send all medical information by mail in compliance to HIPPA to transmit medical records securely. Arbitrators July 29, 2016 order required NORDIC's personal injury attorney Wendy Kent to limit medical request to impaired shoulder because that was the injury claim, and transmission of medical records by mail. However, Attorney Wendy Kent received medical records from one provider outside scope. Unfortunately one cannot un-ring that bell by any subsequent discovery order.

CP 588 – 589. Attorney Steve Hanson raised the issue to the court by e-mail, and Judge Shaffer the entered confirmation of the award. The homeowner became aware of these motions once Steve Hanson raised it to the court via e-mail. Subsequently, homeowner filed a motion to vacate the award. CP 597, February 10, 2017. The trial court Judge Catherine Shaffer denied the motion as untimely for a motion for reconsideration CP 671. Superior Court Rules CR 59(b) requires party to file motion for reconsideration not later than 10 days after the entry of judgment. Mr. Glenn filed the motion for reconsideration February 10, 2017. Washington Uniform Arbitration Act Chapter RCW 7.04A.230 (b) (c) requires a motion to vacate award be filed within the 90 day statutory limit. Arbitrator notified parties December 5, 2016 of the award. Since the trial court confirmed the award on January 27, 2017, the motion to vacate the award must be filed with 90 days according to the statute before March 5, 2017 deadline. The defendant Glenn raised this concern in his motion for reconsideration CP 692 but the trial court denied CP 672 – 673.

### **III. PETITION FOR REVIEW SHOULD BE GRANTED**

Steve Hansen raised the following new issues in his “Answer to the Petition for Review”.

#### **A. DENIAL OF DUE PROCESS**

The Court of Appeals Division 1 ruled Mr. Glenn timely objected to NORDIC’s selection of arbitrators. However, his argument fails on the merits because Glenn failed to respond to NORDIC’s January 21, 2016 letter CP 110 requesting he provide an alternative arbitrator.

Court of Appeals Division I failed to recognize NORDIC did not comply with the statutory requirements RCW 7.04A.090 for initiating arbitration proceedings, or notify Glenn’s attorney either Ray Brooks or Samantha Arango of their request for arbitration. Attorney Steve Hansen could have requested arbitration at any time before initiating the lawsuit, i.e. avoiding unnecessary legal costs or subsequently after filing the motion to compel arbitration October 7, 2015, CP 54. He waited 106 days to initiate arbitration proceedings after filling motion to compel, and blame the delay on the defendant Glenn. Either attorney would have

gladly accepted service. Attorney Steve Hansen mischaracterizes Margaret Glenn absence at the hearing<sup>2</sup>

By Attorney Steve Hanson not following the statutory requirements for initiating arbitration procedures, and filing a complaint with the trial court misrepresents the homeowner Mr. Glenn failed to agree on the selection of arbitrators. His first communication about the selection of arbitrators was included in his motion to compel arbitration October 7, 2015. CP 54. Though RCW 7.04A.110 states “if the parties to an agreement to arbitrate agree on a method for appointing an arbitrator that method must be followed unless it fails”... The court on motion of a party to the arbitration shall appoint the arbitrator. The method of appointing an arbitrator failed because he filed a complaint in court rather than following the statutory process for initiating arbitration proceedings RCW 7.04A.090. The trial court should have honored Mr. Glenn’s motion to amend order; allow him to select an arbitrator, and then compel arbitration CP 103.

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<sup>2</sup> Endre Glenn was ill, an unable to attend the hearing. He required home care during after out-patient surgery during this recovery period with 30 day prescription of opioids for pain. Therefore, Margaret provided home health care service during the recovery period. He raised the issue in his motion to vacate the award CP 597 about his illness. The trial court could have addressed this problem by ordering a hearing on his request for trial de novo providing him the opportunity to be heard rather than summarily striking the request.

## **B. DISCOVERY RULINGS & CONTINUANCE**

The Court of Appeals Division I declined to review Mr. Glenn's second argument related to the denial of emergency motion to extend arbitration schedule because he did not demonstrate that the denial of the motion to extend arbitration schedule prejudicially affected the order confirming the award.

Court of Appeals incorrectly characterizes Mr. Glenn's inability to complete discovery. The failure to complete discovery was due to the VAN WILD Furnishings, and NORDIC Services failure to comply with court order to produce discovery. CP 193 – 195. The arbitrator's discovery order clearly authorized homeowner to depose Rob Tooley, VAN WILD, and John Rossnagle, NORDIC Services. CP 198-199.

The Mr. Glenn advised NORDIC Services of an impaired shoulder. He said NORDIC Services must show up with sufficient workers to move the equipment because he would not be able to assist. NORDIC Services breached the contract when they showed up with insufficient workers, and required the homeowner to assist, or the repair would not be started for several months. CP 35-37

Rob Tooley's June 25, 2014 3:55 PM e-mail to John Rossnagle confirmed the home owner advised NORIDC Services about impaired shoulder.

CP 337. His e-mail on Wed, August 20, 2014 11:41 AM verified NORDIC's responsibility to move the furniture. CP 355. Endre's e-mail on August 14, 2014 11:41 AM requested John Rossnagle and Rob Tooley coordinate the installation to ensure the furniture is removed before NORDIC arrives to install carpet. CP 278. Please reference the e-mail excerpts provided below for convenience.

### CP337

**From:** vanwildinc <vanwildinc@aol.com>  
**To:** johnr <johnr@nordicservices.com>  
**Subject:** Endre Glenn project  
**Date:** Wed, Jun 25, 2014 3:55 pm

John ,  
I just got a call from Endre , the homeowner for this project saying he is ready to move forward with carpet installation..He said he had shoulder surgery thats why we hadn't heard from him..I found the file and the cover sheet was dated 11-14-13...I believe Greg SR was on that project but there is no scope or any details or measurements in the file..He did say he had samples that " We " dropped off..I will have to go out and get the details but i need to know what the scope says insurance is going to cover..I just wanted you to be aware since its been so long..  
Let me know what you need me to do..  
Thanks  
Rob

### CP 355

**From:** vanwildinc <vanwildinc@aol.com>  
**To:** johnr <johnr@nordicservices.com>  
**Subject:** Nguyen and Glenn Projects  
**Date:** Wed, Aug 20, 2014 11:41 am

Hey John  
Just checking on the numbers for this project...I am getting ready to order the vinyl , Bo he will be ready after Monday 25th... Let me know if it is OK to move forward...  
  
Also I'm still waiting to schedule Endre's Glens carpet installation with your availability with the furniture moving...Any update on that ?  
  
Thanks ..  
Rob

CP 278

**From:** vanwildinc@aol.com [mailto:vanwildinc@aol.com]  
**Sent:** Thursday, August 14, 2014 1:54 PM  
**To:** endreg@frontier.com  
**Subject:** Re: carpet installation

Thanks Endre...As soon as I hear from John I will let you know...You are correct , the installation should only take 1 full day...

Rob

-----Original Message-----

**From:** Endre' <endreg@frontier.com>  
**To:** vanwildinc <vanwildinc@aol.com>  
**Cc:** johnr <johnr@nordicservices.com>; endreg <endreg@frontier.com>  
**Sent:** Thu, Aug 14, 2014 11:58 am  
**Subject:** RE: carpet installation

Rob,

John will receive the contract today. We need to coordinate the installation date to ensure the furniture is removed before you arrive. The last time we talked, you expected the installation will only require one day.

Let me know if you have further questions.

Best Regards,

Endré

**From:** [vanwildinc@aol.com](mailto:vanwildinc@aol.com) [mailto:vanwildinc@aol.com]  
**Sent:** Wednesday, August 13, 2014 11:15 AM  
**To:** [endreg@frontier.com](mailto:endreg@frontier.com)  
**Cc:** [johnr@nordicservices.com](mailto:johnr@nordicservices.com)  
**Subject:** carpet installaton

Hello Endre

Your carpet will be available for pick up next week as it is in route...I called John Rosnagle at Nordic services to check his schedule for moving furniture..He had said that he has not received the signed contract from you yet..I told him I was going to contact you and he asked me to let you know that he needs that to move forward...

Let me know when you speak to John and then I can work with him for scheduling...

Thanks..

Rob

Rob Tooley's e-mail correspondence to John Rosnagle NORDIC Services project manager clearly demonstrates NORDIC Services was aware of this injury, and took no action to bring sufficient personnel to move the furniture. Rob acknowledged receiving a call from homeowner Mr. Glenn about the shoulder injury CP 337. He subsequently asked John Rosnagle on several

occasions about his schedule for moving the furniture CP 278, CP 355. However when his team arrived for the job they brought no personnel to move the furniture. CP 35-37.

The arbitrator's dismissed Mr. Glenn's counterclaim for personal injury CP 520 (par 41). He denied Mr. Glenn due process to support his claim by refusing to extend the hearing and allow him to depose his key witnesses. CP 610 The testimony of Rob Tooley, and John Rossnagle pertained directly to his claims on the personal injury. Rob Tooley, VAN WILD acted more than a non-party subcontractor. He actively participated in the selection of carpet, ordering of materials, and scheduling of the job. He frequently conferred with John Rossnagle, NORDIC Services project manager to obtain approval for equipment, materials, change orders (CP 173) and scheduling the job. CP 156 – 157. He and John Rossnagle participated directly and integrally in this claim.

### **C. CONFLICT BETWEEN COURT OF APPEALS DIV(s)**

Attorney Steve Hanson raised a new issue concerning purpose of arbitration in contrast to litigation. *In Thorgaard Plumbing & Heating Co. v. King County*, 71 Wash.2d 126 (1967), the Court observed that arbitration was designed to settle controversies, not to serve as a prelude to the litigation: “The very purpose of the arbitration is to avoid the court”. This statement strikes to the heart of the Petitioner's GLENN claims.



Arbitration is a contractual remedy that provides extrajudicial means for resolving disputes. *Thorgaard Plumbing & Heating Co. v. County of King*, 71 Wash.2d 126, 131, 426 P.2d 828 (1967). Generally, Washington courts have held that in the arena of arbitration, **due process guarantees the right to be heard and to present evidence**, after reasonable notice of the time and place of the arbitration hearing. See *ERA Sun River Realty, Inc. v. Tri City Ass'n of Realtors, Inc.*, 103 Wash. App. 955, 958, 14 P.3d 890, 892 (2000)

Why does an attorney who has a contractual agreement for private arbitration RCW 7.04 file a complaint in superior court, a motion to compel arbitration than initiating arbitration procedures pursuant to RCW 7.04A.090 without court intervention, i.e. complying with the statutory requirements for initiating arbitration. Mandatory arbitration RCW 7.06 requires party to arbitrate dispute when there exists no formal agreement to arbitrate, and amount in dispute satisfy the statutory limit. Litigants file a complaint, answer complaint, and superior court mandates arbitration when the dispute is less than \$15,000. Homeowner Mr. Glenn personal injury claims well exceeded this statutory limit, and personal injury claim was not specifically defined in NORDIC's Construction Services Agreement.

Attorney Steve Hansen, NORDIC followed the same procedure for arbitrating a complaint that a party would under RCW 7.06 mandatory arbitration with superior court judge transferring the case to arbitration. NORDIC's contract invoked mandatory arbitration rules CP 584. Arbitrator followed these rules throughout the proceedings. CP 585. If trial de novo as a method to seek redress for an aggrieved party to an adverse arbitration decision is unavailable, then the NORDIC's contract is misleading and confusing; i.e. leading a party to believe a

right exist when it does not CP 194 – 195. No response from superior court judge. NORDIC's actions are inconsistent with a party seeking to arbitrate a claim.

Supreme Court stated 7.06 RCW provides the statutory authorization for superior courts to require arbitration for small claims. RCW 7.06 are inapplicable to private arbitration unless the parties stipulate otherwise. Conversely, private arbitration is governed by Washington's arbitration act, chapter 7.04 RCW. That statute makes agreements to arbitrate existing or future disputes "valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement." RCW 7.04.010.

Private arbitration and mandatory arbitration serve different purposes. As stated the standards by which an aggrieved party appeals an arbitral proceeding differ between private arbitration and mandatory arbitration. **We hold these standards may not be intertwined.** *Reference: In Malted Mousse, Inc. v. Steinmetz, 150 Wash. 2d 518, 526, 79 P.3d 1154, 1158 (2003), as corrected on denial of reconsideration (Mar. 11, 2004)*

#### **IV. AWARD OF ATTORNEY FEES SHOULD BE DENIED**

Attorney Steve Hansen, NORDIC Services, and VAN WILD violated homeowner, Endre Glenn U.S. Constitutional right to due process by conspiring to deny the defendant evidence to support his claims, and present evidence. They willfully and deliberately withheld information. Their failure to comply with the statutory requirements for initiating an

arbitration claim further prejudiced Mr. Glenn right to a due process.

Request for legal fees should be denied, and Supreme Court grant review of the petition. *Magana v. Hyundai Motor Am.*, 167 Wash. 2d 570, 220 P.3d 191 (2009)

## **V. LIEN FORCLOSURE**

Pursuant to NORDIC's ARBITRATION agreement, paragraph (g) CP 51

(g) If Contractor has recorded a lien, the arbitrator shall have the right to resolve all issues concerning the validity of such lien and the corresponding rights and obligations established under RCW 60.04. The Superior Court shall retain jurisdiction for purposes of conducting a foreclosure sale in accordance with the arbitrator's decision. The period of limitation set forth in RCW 60.04.141 shall be tolled until 60 days following the arbitrator's final written decision upon service by one party on the other of a written demand for arbitration.

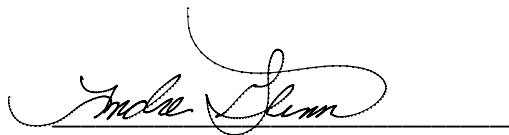
The arbitrator's award excluded the interest of Margaret Glenn CP 520, par 41. Therefore the debtor sale represented only 50% interest in the property; filed Superior Court Clerk, January 25, 2018. Attorney Steve Hansen, NORDIC disregarded the arbitrator's award and fraudulently scheduled the sale of the property to include the interests of both parties; Margaret Glenn, and Endre' Glenn. This action shows how NORDIC continually violated contractual agreements, statutory provisions, and rule

of evidence to obtain judgment against the petitioner Glenn, and violate his rights to due process.

## **VI. CONCLUSION**

Arbitration procedures denied Mr. Glenn his U.S. Constitutional right Amend XIV, and Washington State Constitution Article 1, Section 3 due process, depriving him of his property without a reasonable opportunity to conduct discovery when litigant's NORDIC, and their subcontractor willfully ignored a court order to produce discovery, a fundamental part of due process of law. NORDIC's disregard of statutory requirements for initiating arbitration procedures further prejudiced and denied Mr. Glenn due process. The arbitrator disregarding their misconduct, and superior court judge rewarded them with sanctions against the homeowner. Request Supreme Court grant review of this petition pursuant to RAP 13.4(b).

RESPECTFULLY SUBMITTED 8<sup>th</sup> day of August 2018.

A handwritten signature in black ink, appearing to read "Andre Glenn", is written over a horizontal line.

Andre Glenn, Pro Se

## CERTIFICATE OF SERVICE

I certify that on Thursday, August 8, 2018, I mailed a copy of the foregoing “Reply to Answer to Petition for Review” by the methods indicated below:

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Andre Glenn, Petitioner

**ENDRE GLENN - FILING PRO SE**

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**Transmittal Information**

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