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No. 664115

2011/11/08

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COURT OF APPEALS, DIVISION ONE OF THE STATE OF WASHINGTON

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RANIE MANIPON, Appellant/Respondent,

v.

JEFFREY MANIPON, Petitioner

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BRIEF OF APPELLANT

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**Brief of Appellant**

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**I. Assignments of Error**

**Assignments of Error**

1. The trial court erred in entering the order of November 15, 2010, granting petitioner's motion to enforce decree of dissolution.
2. The trial court erred in entering the order of November 15, 2010, granting petitioner's motion for award of attorney fees and costs.

**Issues Pertaining to Assignments of Error**

1. Whether or not the respondent failed to make the monthly mortgage payment on the condominium under the Section 8.1 of the parties Property Settlement Agreement. (Assignment of Error 1.)

2. Whether or not the trial court erred in granting the petitioner's award of attorney fees and costs under Section 11.2 of the parties Property Settlement Agreement (Assignment of Error 2.)

## **II. STATEMENT OF THE CASE**

Jeffery Manipon ("Petitioner") and Ranie Manipon ("Respondent") were divorced on April 15, 2009 in King County, Washington. Section 7.1 of the parties Property Settlement Agreement awarded the condominium located at 1832B SW 318<sup>th</sup> Pl., Federal Way, WA, to respondent which she inherited from her deceased mother's estate in 2003. CP – 2; Ex – 2.

The respondent refinanced this condominium to lower her interest rate, and as part of that refinance the bank required the petitioner to be added to the title and mortgage because the parties were married and this is a community property state. CP – 6.

Section 8.3 of the parties Property Settlement Agreement provides in part that: if wife fails to make the mortgage payments on the real

property awarded to her, husband may make the payments and receive reimbursement and/or of his option, require that the real property be listed for sale immediately. CP – 2; Ex – 2

On November 2, 2010, petitioner filed a motion to enforce decree and for costs/fees claiming that respondent failed to make payment on the condominium. CP – 3; CP – 4.

Petitioner claimed that a past due notice on the mortgage was issued on October 26, 2010, and that if Respondent did not issue payment by November 10, 2010, then payment will be 30 days past due and will be reported to credit agencies. CP – 3

Petitioner further claimed that the bank intended to report the missed payment to the credit bureaus if the payment was received more than 30 days past the due date. CP – 5

On November 8, 2010, the respondent filed a response and declaration proving that every payment was made on the condominium over the last 48 months including the October 2010 payment and attached

proof of timely payments, Exhibits A and B of the Respondent's Declaration. CP – 6; Ex – 6

On November 15, 2010, the trial court granted Petitioner's motion to enforce the decree of dissolution allowing the Petitioner to list and conduct the sale of the condominium and awarded attorney fees and costs to the Petitioner. CP – 7; CP – 8; CP – 9.

On December 13, 2010, the Respondent filed a Notice of Appeal to Court of Appeals. CP – 1

### **III. ARGUMENT**

- 1. The trial court erred by finding that the Respondent failed to make the October 2010 monthly mortgage payment under Section 8.1 of the parties Property Settlement Agreement.**

The evidence (bank statements, Exhibits A and B of the respondent's declaration) clearly show that the Respondent made the October 2010 monthly mortgage payment. CP – 6; Ex – 6. Accordingly, the Respondent did not fail to make the monthly mortgage payment as

required under Section 8.1 of the parties Property Settlement Agreement as claimed by the Petitioner. CP – 2; Ex – 2

Petitioner claims that the October 2010 monthly mortgage payment was late. CP – 3. The bank statement clearly shows that the payment was not late. CP – 6; Ex – 6.

Nonetheless, a late payment is not the same as failing to make the payment. The parties Property Settlement Agreement is a contract, pure and simple. A court's purpose in interpreting a contract is to ascertain the intention of the parties. Extrinsic evidence is admissible as to the entire circumstances under which the contract was made, as an aid in ascertaining the parties' intent.

In the case at bar, Section 8.3 of the parties Property Settlement Agreement provides in part that: “if wife ***FAILS*** (emphasis mine) to make the mortgage payments on the real property awarded to her, husband may make the payments and receive reimbursement and/or of his option, require that the real property be listed for sale immediately”. CP – 2; Ex – 2.

Petitioner does not state anywhere in his Petition to Enforce Decree

of Dissolution that the intent of the parties was that “late payments “is the same as “fails to make the mortgage payments”. Rather, Petitioner only claims that the late payment would cause a great determinant to his credit. CP – 3; CP – 5. However, as pointed out by the Petitioner, the bank would only report to the credit agencies if the payment was 30 days past due. CP – 6. The payment was not 30 days past due.

Moreover, Petitioner fails to mention that there is a short sale on the family home that the Petitioner has approved, and is just waiting for the bank to approve the short sale. Obviously, this short sale will adversely affect the Petitioner’s credit. Thus, if the Petitioner were truly concerned about a late payment on the condominium affecting his credit he would never have approved a short sale of over \$65,000.00 on the family home.

As stated by the Respondent, the intent of the parties was that the two properties would be awarded to the Respondent as the equity in both these properties were the result of the inheritance that she had received from her mother. CP – 6. Furthermore, it was the intent of parties that the Respondent would refinance the mortgage within 42 months. CP – 2. It has only been 22 months. Consequently, this agreement had nothing to do

with any late or unpaid payments because there had been none as evident by the bank statement showing that the Respondent has made every payment within the last 48 months. CP – 6; Ex. – 6. In fact, just prior to the divorce, the parties refinanced the family home and the Petitioner used \$37,000.00 to purchase a new truck and took additional monies to pay off his credit cards. CP – 6. This left the mortgage greater than the value of the home. CP – 6.

**2. The trial court erred by awarding of attorney fees and costs to the Petitioner**

Section 11.2 of the parties Property Settlement Agreement provides in part that: “In the event of breach of this Agreement, the breaching party shall pat the non-breaching party ...all reasonable attorneys’ fees and costs incurred by the non-breaching party in connection with such breach”. CP – 2.

In the case at bar, as stated above, the Respondent did not fail to make the monthly mortgage payments; therefore, the Respondent did not breach the parties Property Settlement Agreement. Furthermore, a “late

payment” does not constitute failure to make payment; and thus, even if the Respondent had made a late payment, which she did not, she still would not have breached the agreement by doing so.

Finally, the attorney did not submit a fee declaration for review and approval by the trial court; rather, the attorney just stated in amount in the petition without submitting any verification and proof of fees and costs incurred.

#### **IV. CONCLUSION**

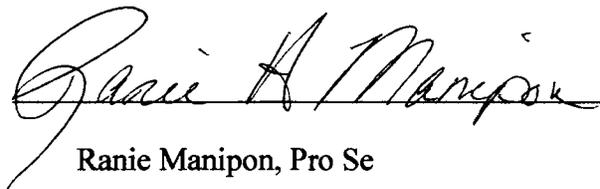
Based upon the facts and law contained herein, this Court should reverse the Trial Court’s order granting the Petitioner’s relief that allows him to list and sell the condominium based upon the fact that the Respondent did make the monthly mortgage payments on the condominium on time; and therefore, the Respondent was not in breach the parties Property Settlement Agreement with respect to the monthly mortgage payments on the condominium. Notwithstanding, even if the payment was late, which it was not, it is not the same as failing to make the payment under the terms of the Property Settlement Agreement; and

therefore, a late payment is not in breach of the parties Property Settlement Agreement with respect to the monthly mortgage payment on the condominium.

Based upon the facts and law contained herein, this Court should reverse the Trial Court's order granting attorney fees and costs to the Petitioner based upon the fact that the Respondent was not in breach the parties Property Settlement Agreement with respect to the monthly mortgage payments on the condominium. Additionally, this Court should reverse the Trial Court's order granting attorney fees and costs to the Petitioner based upon the fact that the attorney did not submit a fee declaration to the Trial Court for review and approval verifying fees and costs incurred.

March 28, 2011

Respectfully submitted,

A handwritten signature in cursive script that reads "Ranie A Manipon". The signature is written in black ink and is positioned above the printed name.

Ranie Manipon, Pro Se

Appellant/ Respondent

2011 MAR 28 P 2:10

IN THE COURT OF APPEALS DIVISION I  
IN AND FOR THE STATE OF WASHINGTON

In re the Marriage of	)	Case No.: 664115
Ranie Manipon	)	
	)	<b>PROOF OF SERVICE</b>
Appellant,	)	
and	)	
Jeffrey Paul Manipon	)	
Respondent.	)	

The undersigned affirms under oath that a copy of the Appellant's Brief was served on the following persons on the date noted by regular first class mail, postage prepaid:

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I CERTIFY under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

Dated this 28<sup>th</sup> day of March, 2011

  
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 RANIE MANIPON, Pro Se  
 Respondent/Appellant