

67031-0

67031-0

\ IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION ONE

CITY OF SEATTLE DEPARTMENT OF
PLANNING LAND USE AND DEVELOPMENT
RESPONDANT

VS
BRUCE BORJESSON
APPELLANT

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR KING COUNTY

THE Honorable Laura G Middaugh

Bruce Borjesson
Pro Se Plaintiff
9519 4th NW
Seattle WA 98117
2063807764

FILED
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IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON DIVISION ONE

Bruce Borjesson
Appellant
VS
CITY OF SEATTLE,
DEPT OF PLANNING
AND DEVELOPMENT
DIANE SIGAMURA,
DIRECTOR
SUPERVISOR CLAY
THOMPSON
INSPECTORS
NAZANIN SAMIMI,
TOM BRADRICK AND
OTHER
ANONYMOUSE
PARTIES
DEFENDANTS

Civil Action No.:67031-0

APPELLANTS
BRIEF IN FULL
NOTICE OF
APPEAL OF
DISMISSAL OF
ABOVE
CAPTIONED
CASE NO.# 2-
09413452SEA

Comes now the Appellant plaintiff Bruce Borjesson, acting Pro se on his own behalf filing the Notice of Appeal on the Appeal of Judge Middaugh's Order of Dismissal of Lawsuit #09-2-413452SEA dated March 18, 2011 in the matter of Borjesson vs the City of Seattle, et al.

INTRODUCTION

This matter is now as applied by Rule 2.1 of RALJ State of Washington AN APPEAL as a matter of right That the State of Washington Superior Appeals Court has Jurisdiction and under Rule 2.5 (a) 2)egregious error with insufficiency of fact finding on the part of Motions hearing Judge, }3 manifest error affecting a constitutional right or (rights)beginning with denial of full due process, by trial, due to inadvertence, mistake , misjudgment, MISPRINTING on affidavit of service, and general error under rule 12(b)(6) (The standard of review a dismissal under CR 12 (b)(6) are only granted sparingly and with care , which was not done in this case)Review of dismissal of a claim under *CR 12(b)(6) de novo, Reid V Pierce County, 136 Wn 2nd 200-01, 961*

P2nd 333 (1998), Cutler v. Phillips Petroleum Co 124 Wn 2nd 749, 755, 881 P 2nd 216 (1994) Dismissal is appropriate only if the complaint alleges no facts that would justify recovery. (RP)Page5
line 3-23 And Furthermore under } **CR 60 (b) RELIEF FROM JUDGEMENT OR ORDER (a), CLERICAL MISTAKES**, errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any part and after such notice, if any, as the court orders. A dismissal may likewise be vacated pursuant to the rule. (*Vaughn V Chung, 119 Wn 2nd 273, 830 P 2nd 668 (1992) over ruling Nicholson V Ballard., 7 Wn App 230, 499 P. 2nd 212 (1972)*) This is now herein requested, as the Honorable Judge Middaugh has ruled and the Plaintiff, Mr Borjesson finds it necessary for the Appeals Court to grant the relief requested. Also CR 60 (b) (1) mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order,”}, Also Due to Judges manner Plaintiff was blocked from speaking Completely curtailing First Amendment right to free speech: especially in court. Further the

decision to Dismiss the Lawsuit is without complete legal basis, A LUPA (RCW 36.70C)}petition is not necessary when a complaint/lawsuit is filed for trespass, harassment, prior to any warrant-less searches (citations) and so forth Therefore the decision for Dismissal of Lawsuit is in error. Reliance by the Judge upon a Misprint of “Motion to Postpone” Which should have read “Amended Complaint , FOR TRESPASSING HARASSMENT, INCLUSION OF CITATION #1018768-8, VIOLATIONS OF EX POST FACTO, CONSTITUTIONAL VIOLATIONS, PERSONAL US OF PROPERTY VS LAND USE, FALSE CLAIMS OF “JUNK” AND OTHER ITEMS OF PERSONAL USE’ NON STORAGE OF SAID ITEMS, VIOLATIONS OF DESTRUCTION OF PUBLIC PROPERTY (i.e DOCUMENTS IN THE CITIES CONTROL, BREACH OF CONTRACT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS SLANDER}”In this case Trespass and harassment by public officials has occurred with the additional error by Judge Middaugh of not realizing that the Trespass occurred before any City Citation

was issued, (RP) Page 30 line 3-25)**US SUPREME COURT**
RULING{ see *Silverthorne Lumber Inc.co Vs U>S> 251 U.S. 385*
(1920) “fruit of the poisonous tree”, In addition A LUPA petition
which Judge Middaugh is referring to on (RP)Page 9line 15 full
paragraph” is not a lawsuit, Judge Middaugh is in error claiming
LUPA should be the lawsuit and vis versa. Land Use Petition Act
is clear on this issue. Lawsuits are not LUPA petitions. Therefore
this further makes the actions by the City of Seattle, unlawful. The
further error by the Judge is therefore causing the Plaintiff MR
>Borjesson to file a LUPA petition whilst ignoring the actual
lawsuit which is right and now acceptable by the courts. (RP)Page
26 Line 3 through 26 errors

ASSIGNMENT OF ERRORS

Judge Middaugh erroneously ordered the Dismissal of
the Plaintiffs Lawsuit on the incorrect basis that the Lawsuit was
Improperly Served; {it was properly served} The Dept of Planning
and Land Use Code Compliance Manager Diane Davis is the
Mayors Agent, Under RCW:4.28.080 (2)

FURTHER that Laches had attached, the statute of limitations had also run out, and the recognition of the issue of trespass harassment had occurred before the citations were issued and in effect: in all cases were errors. Now According to CR 60 (b) 1) which is in effect, CR 60 (b) 1) was ignored and Trial was not allowed for the Plaintiff due to clerical errors, inadvertence, surprise, and excusable neglect, and due diligence. {(RP) page 29 line 2-25, page 30 lines 1-25 All of which applies as meriteous defense, Without Trial no Due Process. Without findings of fact and conclusions of law no due process. State Constitution Article 1 Section 10. That the Judge ruled on erroneously that the City of Seattle through the Cities attorney may force the Plaintiff to file a LUPA petition were no LUPA petition is necessary. The property owner is changing nothing that has been on the property for many years. . That no actions on the Plaintiffs properties are needed, and have not been in setbacks, for more than 50 years. Under RCW 36.70C.060 “Only certain parties may file a land use petition NOT THE CITY OF SEATTLE> { They have no standing by legislative

mandate. For the City of Seattle through its city attorney to force anyone to obtain, and unnecessarily so, a LUPA petition being used in this manner by the City of Seattle is unlawful. That Judge Middaugh did not make note of this and in fact ruled in the City of Seattle's favor. No findings of fact or conclusions of law. (RP) page 29 line 1-25, and Page 30 Lines 1-18.

The additional error was not examining the State Law Vs the Municipal Code to see which had specific control. <i.e constitution vs> municipal code> (RP) page 29 line 1-25 , and Page 30 lines 1-18 Was the Lawsuit in control or was a Non Filed LUPA in Control. ?? The further error which was promulgated by the Cities Attorney was the “exclusivity of LUPA” This is egregious error. LUPA has no authority, jurisdiction, nor precedence of law over any lawsuit. Nor is anything indicated in LUPA to the effect of its correlation of law/jurisdiction over any lawsuit.

ARGUMENT

Statement of the Case

1: **Trespass against the Plaintiff:** This event occurred prior to the issuance of any Citation which in and of itself is a warrant-less search and now attempt at seizure of plaintiffs properties: No Municipality under the cover of law, can create and maintain a warrant-less search of persons or property. In violation of RCW 9A.52.070 Therefore under the ruling of *US SUPREME COURT RULING*{ see *Silverthorne Lumber Inc. 's Vs U>S> 251 U.S. 385 (1920) "fruit of the poisonous tree"* all actions after the Trespass and Harassment are to be considered "*fruit of the poisonous tree*" and therefore the lawsuit should be allowed. That the Inspectors did not perform simple due diligence at their offices prior to inspection is noted by their actions and subsequent testimonies. Please note that all properties at 9519 4th NW and 9520 4th NW were in dispute as to property lines vs fence lines and the Inspectors did trespass therein, and thereon..

See maps. Plaintiffs exhibit one

Unlawful or unreasonable search is and shall remain within constitutional immunity (Fourth Amendment) from unreasonable searches and seizures see *Bush v State 64 Ok. Cr. 161, 77 Pnd 1184 1187. Exclusionary rule and Silverthorne Lumber Inc V US} US Supreme Court. 'fruit of the poisonous tree"*

Judge Middaugh made neither findings of fact nor conclusions of law

Regarding these issues above. (RP) Page 29 Line 2-25 and Page 30

Lines 1-18 Judge Middaugh's Unwritten Gag order

Did not allow the Plaintiff to address this nor the other errors now at

Issue:

See Judges Canons 2.2-2.6 A. Standard of Review; Burden of Proof

(RP) page 1-25 we ask the appeals court to review the validity of a

Warrant less search de novo. *State v. Kypreos, 110 Wn. App. 612,*

616, 39 P.3d 371 (2002). (RP) line 3 through 18 We ask the appeals

\court to review findings of fact and conclusions of law relating to the

Suppression of evidence de novo and findings of fact for substantial

evidence. *State v. Winterstein, 167 Wn.2d 620, 628, 220 P.3d 1226*

(2009). (RP) Page 37 line 7 through 25.as follows:

Substantial evidence exists where there is a sufficient quantity of

Evidence in the Record to persuade a fair-minded, rational person of

the truth of the finding. *State v. Hill, 123 Wn.2d 641, 647, 870 P.2d*

313 (1994). (RP) Page 38 lines 1-25 That there has been no finding

of facts nor conclusions of law performed either before nor during

Judge Middaugh's hearing.

Generally, we ask the appeals court to view hearing court findings

and the two Department of Land Use and Planning hearings.as

verities, as provided there is substantial evidence to support them.

Hill, 123 Wn.2d at 647.

Judge Middaugh: Unwritten Gag (RP) page 38 line one through line 25 order for dismissal of lawsuit hearing did not address any constitutional issues at all. In (CP) page 11 lines 13-19 All of which are errors. See Judges Canons 2.2-2.6 Other than appeals Distinctive Issue Of legality of Diane Davis, acting as Code Compliance Manager for the Department of Planning Land Use and Development and her misrepresentation as City Employee, eligible to receive legal/lawsuit documents. As the Mayors Agent she is Operating In compliance with RCW 4.28.080 (2) See (RP) page 33 line 25 of Judge Middaugh's Statements. (rulings).

Judge Middaugh's Claim on (RP) Page 16 Line 2-20 indicating that even though Diane Davis is 18 years old, and an employee working as Code Compliance Manager for the Dept of Planning Land use and Development, is somehow *ineligible* {Judge Middaugh's claim of "that's not how its done" is mis-apprehension, Mis-comprehension Mis-perception of Judicial action on Judge Middaugh's part.} A clear violation of Judges Canons See below. @ Judges Canons 2.3 (A)(B)(D) The city attorneys false

claim that Diane Davis not a City Employee, NOT Working as the CODE COMPLIANCE MANAGER for the Dept of Land Use and Development on (RP) Line3 page 17 of the hearing is error on the part of the Judge. Again no findings of fact nor conclusions of law. In order for Diane Davis in her official capacity To deliver the Lawsuit to the city of Seattle Attorneys office, which Diane Davis did, as well as to her boss the Director of Planning land Use and Development; she either had to accept that she be the City of Seattles Mayors Agent , or just refuse and say NO. Judge Middaugh Did not at any time address this or the following: The following Judges Canons which all Judges are familiar with is included as a complete instant contrast to the actual events which the Plaintiff was included:

Furthermore Defendant furthermore raises the defenses of

LACHES

AND LACHES BY ESTOPPEL:CLERKS PAPERS

PAGE_15____, LINES 1-15 AND PAGE 16 LINES 1-15_ {from

Blacks Law Dictionary “ conduct of party which has placed other

partying in a situation where his rights will be imperiled and his defenses embarrassed is a basis of *Laches With State V Abernathy*, 159 Tenn 175, 17 S.W. 2nd 17, 19. Knowledge, unreasonable delay, and change of position are essential elements. *And Shanik v White Sewing Machine Corp.*, 25 Del. Ch 371, 19 A 2nd 831, 837, Laches requires an element of estoppel or neglect which has operated to prejudice of Defendant, *Scarborough V Pickens*, 26 Tenn. App 213, 170 SW 2nd 585, 588, *Mattison-Greenlee, Service Corp, V Culhane DC Ill.*, 20 F. Supp., 882, 884. Laches by Estoppel again Blacks Law Dictionary page 787, {“a failure to do something which should be done or to claim or enforce a right at a proper time. *Hutchinson v Kenny C>C> A>N>C>* 27 F. 2nd 254 256 A neglect to do something which one should do, or to seek to enforce a right at a proper time. (RP) Page 15 lines 1-15

2) ***TIME*** had passed by over the Municipality the same as the properties at 9519 and 9520 4th NW. What kept the City from enforcement if not its own?

And what of laws that had not yet been passed??? At the very least statute of limitations had expired under the Ownership of Major James J Harris. RCW 4.080.010 Washington State Statute of Limitations.

3) trespass on private property (prior to the issue of any citations) and harassment of same private person and libelous slander of what exists on the property, there is sufficient proof supplied by the City of Seattle's own Inspectors of these "fruits of the poisonous tree" {*See US Constitutional Law; Silverthorne Lumber Co v. United States , 251 U.S> 385 (1920) "fruit of the poisonous tree"* which is Misapprehension or Miscomprehension of the following in Courts' actions (the following are the Listing of Judges Canons

For the purposes of quick reference by the Appeals Court

RULE 2.3

Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so. (C)

A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making reference to factors that are relevant to an issue in a proceeding.

COMMENT {Please note this COMMENT as well as the following COMMENTS after each Judges Canons are from the

Judges Canons and NOT written as a comment by MR Borjesson}

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or

physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

[5] "Bias or prejudice" does not include references to or distinctions based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status when these factors are

legitimately relevant to the advocacy or decision of the proceeding, or, with regard to administrative matters, when these factors are legitimately relevant to the issues involved.

RULE 2.4

External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor, or fear of criticism. (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or authorize others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] Judges shall decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular

and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and *unnecessary costs*.

RULE 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle

matters in dispute but should not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented

to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification or recusal may be appropriate. See RULE 2.11(A)(1).

1)any and All constitutional violations perpetrated by the City of Seattle, vis a vis their inspectors, trespass/harassment, warrantless searches and seizures

2) Nor was any thought or motion or order acted upon regarding the violation of the trespass which occurred BEFORE any citation (in each case presented) was issued.

3) Nor was the trespass considered in the light of “fruit of the poisonous tree” which is a significant issue in these warrant-less searches and now attempts at seizures:

3) Nor was any compliance with the Plaintiff’s constitutional right to due process even considered, except in passing., simple appearance does not constitute “due process”

4) Interest in what damages were done by the city were inconclusive, and in the light of Quiet Title and Quiet Constitutional rights irrelevant. Damages vs Amount paid is not a constitutional issue. See starting at (RP)page 26 line _2 Judge Middaugh’s questions as to “what was damaged?” (RP) Page and line CR Rule 12 (b) (6) Privacy, and free speech, and COMPLETE due process {I>E>elderly, disabled, widow, widower, orphan and native Americans unable to pay for legal counsel}to defend themselves, legally and physically

Example (RP) Line 1-4 page 14 Judge Middaugh: “ other –what damage did that cause to you? Clay Thompson-Chief Inspector His testimony was not used at court, “if I understand that correctly. ;:” Mr Borjesson L Yeah Yes it was used at—(interrupted by the judge)

The Judge Had not read nor at the least understood even the simplest detail of the Commissioners Watanabe and Tanners rulings on two occasions and the fact that “THEY {meaning the commissioners}DID NOT WEIGH ANYTHING SAID BY THE PLAINTIFF”. None. How can a ruling be made if the case is mis-apprehended, mis-read, with Bias.in the original hearings? Under rule 12 (b)(6) failure to state a claim upon which relief can be granted was ignored and written into the order that even though the Judge Noted a motion was made invoking CR Rule 12 (b) (6) by the plaintiff the Judge chose not to rule which is a violation of the Civil Rules.and so indicated in the Judges Order on Civil motion in her ruling Page 78 (as page 1 of the signed order at) line, (RP)

Page 43 Line 5-25 See:(RP)Page 12 Line:6 through 25, and the following conversation with Judge Middaugh.

At no time was the issue of “prior to the Citations” {I>E> Trespass and Harassment before the citations were issued as findings of fact nor conclusions of law} visited by the Judge, even slightly. Judge Middaugh did not allow the Plaintiff Mr Borjesson to speak to what the \$3million was for. “It was to create a Native American Trust here so that the Elderly, Disabled, Homeless, Widow, Widower , Orphan and Native American who now have NO representation when attacked by the City of Seattle on their real property.” {this was the rest of the testimony stopped by the Judge.} Lawyers will not act or even talk to someone without some form of payment. Judge Middaugh did not allow Mr. Borjesson to explain what the \$3million was for, still. **It is suffice to say that Judge Middaugh did not violate ALL of the above Canons, only those which were important to this case.**

CONCLUSION {STATEMENT OF THE ISSUES}

THAT A Motion to Vacate the Order of the Dismissal of the Lawsuit against the City of Seattle and its Land Use Director/inspectors be given or in the alternative the decision be reversed. The appeals court provide a NEW trial or in the alternative re-instate the lawsuit which can be given by the Superior Court and that until and upon so doing Defendant pleads this motion and would ask the court to provide relief from false default judgment egregiously allowed by prejudicial and discriminatory actions in the Superior court acting only peripherally and procedurally to circumvent the due process clauses of our rights and our constitution. That this motion is following CR 60 (b) (1)(RP) Page 37 line 22-25, and Page 38 line 1-25 and its relationship to CR Rule 60 (a)(b)(1) (10) and (11) which permits the court to vacate for any other reason justifying the relief from the operation of the judgment. That under *Rozner v City of Bellevue* 784 P2nd 537, 56 WashApp525, review granted 792 P 2nd 536 114 Wash 2nd 1019 reversed 804 P2nd 24, 116 Wash 2nd 342 “to the extent that forfeiture statues are civil in

nature, the proponent of forfeiture should be required to prove its claim by a preponderance of the evidence (at trial) in order to prevail.” A default judgment may be set aside where the moving party shows excusable neglect, due diligence, a meritorious defense and no substantial hardship to the opposing party. *Estate of George Steven, 94 Wash App. 20, 971 P2nd 58 (1999)* A default judgment may also be vacated for personal jurisdiction even where the action has been subject to extensive litigation by the parties, including the issuance of a mandate by the Wash Supreme Court, *Bour v Johnson 80 Wn App 643, 910 P2nd 548 550 9 (1996)*.

That the name and addresses of the Appellant (Plaintiff) Bruce Borjesson Pro Se, 9519 4th NW Seattle Wash 98117 (ph 2063807764)

The Defendants are represented by City of Seattle, City Attorney, Elizabeth Anderson,

At 600 5th Ave Fourth Floor, Seattle Wa 98000

The State Court of Appeals is the proper venue for review of the
above entitled actions.

Bruce Borjesson Appellant, Pro Se Date Sept 9, 2011.