

No. 67393-9-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

VILA PACE-KNAPP
Appellant

v.

DICK PELASCINI, CECELIA PELASCINI; THOMAS BOBOTH; and
PACIFIC SHORELINE MORTGAGE, INC.

Respondents

APPELLANT'S REPLY TO RESPONDENT'S BRIEF IN
OPPOSITION

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 ORIGINAL

A. Reply to Defendants' Incorrect Factual Assertions.

As noted in her Opening Brief, Appellant Vila Pace-Knapp (“Pace-Knapp”) was the Plaintiff in the trial court proceeding who has prevailed against Dick Pelascini, Cecelia Pelascini, Thomas Boboth and Pacific Shoreline Mortgage, Inc. (collectively, “Defendants”). It is important for this Court to bear in mind that these Defendants illegally took Ms. Pace-Knapp’s home and her equity therein. The Court of Appeals originally found, based upon the unchallenged trial court findings, that “the Pelascinis deceived Pace-Knapp when they promised her that they would help her save her home and implied that they would refinance her home loan. Simply stated, the point is that they saved her home for themselves so that they would not have to bid at the rescheduled trustees sale. They did not help her save her home for her, as suggested. The Pelascinis practice of preying on this and other vulnerable home owners on the eve of foreclosure is the type of practice likely to deceive future distressed owners in the same manner.” Pace-Knapp v. Pelascini, 143 Wn.App. 1037, 1039, 2008 WL 688279.

That Court further found that “Pelascini and Boboth were likely to repeat this approach and have done so in the past. Such a business practice impacts the public interest by targeting and harming vulnerable individuals.” Pace-Knapp v. Pelascini, *supra*, at 1040-1042. Ms. Pace-

Knapp was awarded her attorneys fees and costs for the trial and on the first appeal. *Id.* The Defendants have falsely asserted to this Court that the Findings of Fact and Conclusions of Law (“FOFCOL”) first entered by the trial court on October 16, 2006 was not a judgment. Response, 3, fn 5, referring to CP 197. However, the plain language of the FOFCOL indicates that it was a final judgment and served as such to allow the Defendants to appeal. *Id.* A judgment in a “standardized” form was not created before the Defendants appealed, but the FOFCOL were most certainly a final judgment. It was treated as such by this Court on the two previous appeals.

The case was remanded to the trial court to recalculate damages following the first appeal and to determine the amount of attorneys’ fees and costs that should be awarded to Ms. Pace-Knapp. *Id.*; CP 96. The trial court made that determination regarding the dollar value of damages and fixed the amount of attorneys’ fees and costs awarded to Plaintiff, including a lodestar multiplier. Unpublished Opinion, Division One, Case No. 63758-4-I, 7-9 (February 14, 2011) (“Second Appeal”). The Defendants appealed that decision as well and lost. *Id.* at 18. In short, the Defendants continued to make every effort to prevent Ms. Pace-Knapp from collecting on her Judgment and as a result, interest continued to

accrue on the entirety of the Judgment, including the attorneys' fees and costs by operation of the statute.

In its brief, the Defendants contend that because the Opinion on the Second Appeal contained language that noted that Ms. Pace-Knapp "conceded that post judgment interest should accrue only on the damages awarded by the trial court for lost equity, excess rental payment, and treble damages under the CPA", it somehow means that Ms. Pace-Knapp is not entitled to interest on the attorneys' fees and costs. Response, 5. This argument is meaningless. As this Court is aware, that opinion was only dealing with Defendants' arguments about the correct manner in which to measure damages on remand, including the pre-judgment and post-judgment interest on those damages. Second Appeal at 18. Further, the only issue related to post-judgment was a concession by Ms. Pace-Knapp that she was not entitled to post-Judgment interest on the pre-Judgment interest amounts, and that its inclusion had simply been a math error. *Id.* There was no discussion or argument in that appeal regarding interest on the attorneys' fees and costs and therefore, nothing in that Opinion can be construed as referring to interest on those amounts. There was no language in the Judgment which precluded post-Judgment interest on the attorneys' fees and costs and no reason to believe that there was an argument being asserted by the Defendants that the provisions of RCW

4.56.110(4) did not apply. “. . . judgments **shall** bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof.” RCW 4.56.110(4).

B. Defendants are required by operation of statute to pay interest on Plaintiff's attorneys' fees and costs.

Ms. Pace-Knapp laid out the process by which she sought to be paid by the Defendants following this Court's decision in February in her Opening Brief. In short, she did everything that she was supposed to do in an effort to obtain payment, and she was thwarted at every turn by the Defendants, who continue to contend that they should not be required to pay the damages and attorneys fees and costs, and interest which has accrued thereon, as a result of their unfair and deceptive acts. They refused to post an increased bond while the matter was before the Supreme Court (CP 357-358; 485-496; 601-602). The Supreme Court denied review on July 3, 2011. (COA Case No. 63758-4-I; Supreme Court Case No. 85771-7).

Defendants filed a Motion to Establish Judgment and indicated in that pleading and in others filed during that time period that Ms. Pace-Knapp was not entitled to interest on portions of her Judgment, including the attorneys' fees and costs and was also disputing when interest that was accruing would accrue (beginning in 2006 when the first Judgment was

entered or in 2009 when the new Judgment was entered after the first appellate decision). (CP 262-271; 272-349; 361-368; 369-453). Thus, Ms. Pace-Knapp was required to also ask the trial court to issue a ruling to resolve the dispute among the parties, and she asked the trial court to award her attorneys' fees and costs for all of her collection efforts and the motion practice. (CP 485-496). Ms. Pace-Knapp has always maintained that she is entitled to the interest on the attorneys' fees and costs by operation of the statute. She was not required to include the interest notation on the Judgment in order to collect that interest. There is nothing in the statute and nothing in the Washington case law which sets out such a requirement. RCW 4.64.060 sets out the requirements for a judgment summary and its only requirement for interest is "the interest owed to the date of judgment." *Id.* There is not even a requirement for the interest rate to be stated on the face of the judgment summary. Presumably this is because the interest rate is determined by operation of law under RCW 4.56.110(4) unless it falls under one of the exceptions provided for in that statute. RCW 4.56.110.

The trial court entered the new Judgment but the Defendants added language to the form which designated that interest accrued on the principal amount of the Judgment. Ms. Pace-Knapp maintains that this does not change the fact that under the relevant statutes, interest accrues

on the attorneys' fees and costs by operation of that statute. The Defendants' attempt to alter the requirements of the statute by adding that language to the Judgment does not alter that fact. Clearly Defendants were trying to subversively alter the requirements under the statute, but it should not have been permitted by the trial court and this Court should not endorse its efforts to further subvert Washington state law. (CP 570-572) Not only did this document directly contravene the Order of this Court by making a change which was not directed by the Court, but it was in direct contravention of the Washington judgment statutes and case law. *Id.*; Second Appeal.

When Ms. Pace-Knapp became aware that the Defendants were taking the position that she was not entitled to interest on her attorneys' fees and costs because of the language in the Judgment, she sought an order from the trial court clarifying its position, along with a request for her attorneys' fees and costs incurred in bringing the motions to obtain a new bond and respond to the motion for a new judgment. Without providing any reason for its decision to ignore the statutory requirements that interest accrue on the attorneys' fees and costs once they became part of the judgment and that Ms. Pace-Knapp was entitled to her attorneys fees and costs pursuant to the original award, on April 22, 2011 the trial court entered an Order denying Ms. Pace-Knapp's Motion For Contempt,

to Fix the Amount of Additional Attorneys' Fees and to Clarify the Date on which the Judgment Began to Accrue Interest. (CP 568-569) Ms. Pace-Knapp filed a Motion for Reconsideration related to portions of that Order and included in that motion was a request that the Court state its reasons for denying Ms. Pace-Knapp her attorneys' fees and costs, but it denied by the trial court and it also refused to provide a basis for its denial. (CP 575-582) The Defendants contend in their Response that Ms. Pace-Knapp did not ask for reconsideration of the contents of the Judgment, but only as to the Motion for Contempt. Response, 9. While it is true that Plaintiff's Motion for Reconsideration was as regards the Motion for Contempt, to Fix the Amount of Additional Attorneys' Fees and to Clarify the Date on which the Judgment Began to Accrue Interest (CP 575-582), a review of the contents of the Motion for Reconsideration makes it clear what Ms. Pace-Knapp was arguing to the Court, and it made no mention of the Court's Order as regards the arguments about the contempt. This is yet another example of the Defendants' efforts to try to distort the record in this case.

The trial court also lifted the stay, but provided the Defendants with yet again more time to post a bond. (CP 601-602) The Defendants were given almost three months to post an increased bond and they refused to do so. *Id.* Then, again without explanation and in direct

contravention of the law, the trial court released the small cash bond amount that had been paid by the Defendants in 2006 back to the Defendants, even though Ms. Pace-Knapp was entitled to those funds. *Id.*

Ms. Pace-Knapp filed an Emergency Request for a Hearing on the above issues with the trial court and especially in order to prevent the release of the funds to the Defendants. (CP 607-613) This hearing was taken off calendar by the Court without explanation and the Motion was denied. *Id.* (CP 625-627; 651-652)

C. Argument.

1. Ms. Pace-Knapp is entitled to interest on the entire Judgment dating from December 1, 2006.

Ms. Pace-Knapp never challenged the contents of the Judgment on the second appeal because there was nothing in that judgment language which contravened Washington statutes. There was no reason for anyone to believe that the Defendants would attempt to avoid the plain language of the Washington judgment statutes. RCW 4.56.110(4). While it provides clarity to include the interest amount which has been determined by the Court on the Judgment, there is nothing in the statutes which require it to be listed on the document. In fact, the Defendants cannot cite to a single case or statute which supports their arguments on this topic. Ms. Pace-Knapp, as the prevailing party is entitled to interest from the date that the

Judgment was entered. RCW 4.56.110(4). Further, entry of the judgment, not the oral decision, accomplishes liquidation of the damages. National Steel Constr. Co. v. National Union Fire Ins. Co., 14 Wn.App. 573, 543 P.2d 642 (1975). Thus, once Ms. Pace-Knapp's attorneys' fees and costs became liquidated, they began accruing judgment interest.

This is clear by reviewing RCW 4.56.110(4):

[J]udgment shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 **on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.** The method for determining an interest rate prescribed by this subsection is also the method for determining the "rate applicable to civil judgments" for purposes of RCW 10.82.090.

RCW 4.56.110(4) (emphasis added). The interest rate on the entirety of the judgment at this time is 12% per annum. RCW 19.52.020. Neither the Defendants nor the trial court has explained why it is appropriate to ignore the dictates of the Washington Legislature.

The case law on the topic of judgments that are only modified on remand by correcting a mathematical error, interest runs from the date of the original judgment. Sintra, Inc. v. City of Seattle, 96 Wn.App. 757, 980 P.2d 796 (1999); *see also*, Yarno v. Hedlund Box & Lumber Co., 135

Wash. 406, 237 P. 1002 (1925) and Fulle v. Boulevard Excavating, Inc., 25 Wn.App. 520, 610 P.2d 387, review denied, 93 Wn.2d 1030 (1980); Coulter v. Asten Group, Inc., 155 Wn.App. 1, 15 (2009). The remand on the Second Appeal did not address the issue of interest on attorneys' fees and costs because it was not the subject of the appeal. There was no mention of it at all. Thus, there was no reason for Ms. Pace-Knapp to believe that there was any question about the accruing of interest on the attorneys' fees and costs portion of the Judgment. It was accruing by operation of the law. Ms. Pace-Knapp did not need to "request" that she be awarded that interest by any court.

Such a belief by Ms. Pace-Knapp is further supported by the fact that under RCW 4.56.110, post judgment interest is **mandatory**. Womack v. Rardon, 133 Wn.App. 254, 135 P.3d 542 (2006) (emphasis added). As noted in her Opening Brief, the Supreme Court in the case of Rufer v. Abbott Labs, 154 Wn.2d 530, 552-553, 114 P.3d 1182 (2005) made it clear that the Court of Appeals did not have the authority to excuse a party against whom a money judgment had been awarded from its portion of the post-judgment interest that accrued during a delay in the appeal because the party could have paid its financial obligation and still appealed the judgment. As noted by the Rufer Court, "Interest is not imposed as a punishment." Rufer v. Abbott Labs, *supra*, citing to Kaiser Aluminum &

Chem. Corp. v. Bonjorno, 494 U.S. 827, 835-36, 110 S. Ct. 1570, 108 L. Ed. 2d 842 (1990); *see also*, Lindsay v. Pac. Topsoils, Inc., 129 Wn.App. 672, 120 P.3d 102 (2005) (reversal of trial court which denied interest); Mahler v. Szucs, 135 Wn.2d 398, 429 (1998), citing to Hansen v. Rothaus, 107 Wn.2d 468, 473, 730 P.2d 662 (1986).

Notably, the Defendants do not respond to any of Ms. Pace-Knapp's arguments with contrary case law or contradictory statutory language. That is because none exists. Rather, they contend that her appeal is untimely. Response Brief, 12-17. The previous appellate record makes clear that there was no discussion at all about the accrual of interest on the attorneys' fees and costs portion of the judgment. Ms. Pace-Knapp was not required to list the interest on the attorneys' fees and costs on the Judgment itself and since it was the Defendants' appeals and not hers, there was no reason to even discuss the subject. Her briefing makes clear that the parties were having a dispute about the interest when she filed her Motion for Contempt, which included a request that the trial court "Fix the Date on which Attorneys' Fees and Costs began to Accrue Interest." (CP 575-582). She maintained then and still maintains that the language used by the Defendants and the trial court in the Judgment does **not** preclude Ms. Pace-Knapp from collecting interest on the attorneys' fees and costs. It was only after the trial court made clear that it was not going to resolve

the dispute that Ms. Pace-Knapp was required to appeal and seek assistance from this Court.

2. Ms. Pace-Knapp is entitled to all of her attorneys' fees and costs incurred in connection with enforcement and collection of the Judgment.

Ms. Pace-Knapp was entitled to her attorneys' fees and costs incurred in collecting on a case which included an award of attorneys' fees and costs, including fees and costs incurred in making the request for attorney's fees and/or defending the entitlement to those fees. Fisher Properties, Inc. v. Arden-Mayfair, Inc., 115 Wn.2d 364, 378, 798 P.2d 799 (1990). She made at least two requests for those fees and costs and supported them with the appropriate documentation, but was denied those fees and costs without explanation from the trial court. (CP 575-582). While the award or refusal to award attorneys fees and costs are within the sound discretion of the trial court, the court did not provide any explanation for the denial is therefore subject to review by this Court. Boeing Co. v. Sierracin Corp., 108 Wn.2d 38, 65, 738 P.2d 665 (1987). (CP 568-569; 625-627).

Defendants cite to Woodcraft v. Constr., Inc. v. Hamilton, 56 Wn.App. 885 (1990) and Caine & Weiner v. Barker, 42 Wn.App. 835, 713 P.2d 1133 (1986) in support of their position that Ms. Pace-Knapp is not entitled to her attorneys' fees and costs incurred in increasing the bond

amount while the Defendants' delayed payment again by seeking Supreme Court review. Response, 20. However, those cases are not on point as the Judgment in this case was not yet final when Ms. Pace-Knapp was bringing the motions and responses which were the source of the request for fees and costs. (CP 568-569; 575-582; 635-627). Further, these cases were focused on claims which arose from contracts and the Court cites to RCW 4.84.330, which is all about contractual attorneys' fees and costs. Id. This case is based upon the Consumer Protection Act and she is entitled to her attorneys' fees and costs incurred in pursuing those claims, even through the Court of Appeals and collection. Fisher Properties, Inc. v. Arden-Mayfair, Inc., supra, at 378; Mason v. Mortgage America, 114 Wn.2d 842, 792 P.2d 142 (1990).

3. This Court should find that the trial court committed a clear error when it released the funds held by the Court to the Defendants.

There is no excuse or explanation provided by the trial court for its release of the funds to the Defendants when Ms. Pace-Knapp had been denied the funds for such a long time. (CP 601-602; 625-627; 651-652). Even though the damage cannot be undone, this Court should nevertheless make clear that it was done in contravention of the law. RAP 8.1(b); RAP 8.1(c)(2). *See also*, Estate of Spahi v. Hughes-Northwest, Inc., 107 Wn.App. 763 (2001); Lampson Universal Rigging, Inc. v. Wash. Pub.

Power Supply Sys., 105 Wn.2d 376, 378, 715 P.2d 1131 (1986); Seven Elect Church v. Rogers, 34 Wn.App. 105, 660 P.2d (1983); Norco Construction v. King County, 106 Wn.2d 290, 721 P.2d 511 (1986).

As the Court of Appeals noted in Brooke v. Robinson, 125 Wn.App. 253, 254 (2004), “It was **clear error** to release the funds before the judgment against the firm was satisfied.” Here, the trial court clearly erred by releasing the funds deposited with the Court to the Defendants. *See also*, Murphee v. Rawlings, 3 Wn.App. 880, 479 P.2d 139 (1970) and Malo v. Anderson, 76 Wn.2d 1, 454 P.2d 828 (1969).

4. This Court has the authority to correct the date of the original Judgment calculation in order to provide Ms. Pace-Knapp to correct an injustice.

It is abundantly clear from the record at the trial court and on the two previous appeals that all of these courts intended for Ms. Pace-Knapp to recover all of her lost equity and the interest thereon from the date that the equity was lost. It appears that Ms. Pace-Knapp (through her counsel) may have made the first mistake with the date that the equity was lost during one of the appeals and the error was thereafter repeated over and over. An error was made during the last round of appeals in that the date of the transfer of Ms. Pace-Knapp’s home to the Defendants was repeatedly referred to as October 26, 2002 rather than the correct date, October 26, 2001. (CP 188-197) Counsel for Ms. Pace-Knapp

contributed to the confusion because some of her pleadings mistakenly listed the 2002 date rather than the 2001 date. This was a “typo” which was certainly known to the Defendants, who allowed the error to be perpetuated. The Defendants perpetuated the error, presumably intentionally, by using the incorrect date on the newly entered Judgment. (CP 570-572)

This Court has the ability to correct this error as failure to do so would constitute a manifest injustice. RAP 18.8. The incorrect date on the Judgment deprives Ms. Pace-Knapp of interest to which she is entitled and provides a windfall to the Defendants. This Court “may waive or alter the provisions of any of these rules ... in order to serve the ends of justice.” RAP 18.8(a). These Defendants should not benefit from this error, especially given their track record of doing everything within their power to deprive Ms. Pace-Knapp of the benefits of her Judgment. Defendants provide no support for their opposition except that the Judgment is final, but of course, that is the purpose of RAP 18.8(a) – to provide relief to parties “in order to serve the ends of justice.” RAP 18.8(a). The Defendants apparently admit that they realized the error, but chose to ignore it and continue to allow the error.

5. This appeal was timely filed.

As noted above and in the Opening Brief, Ms. Pace-Knapp filed this appeal once it became clear that the trial court was refusing to clarify the question as to when interest began to accrue on the attorneys fees and costs portion of the Judgment. Ms. Pace-Knapp did not have reason to appeal the language in the Judgment regarding interest because it did not change the fact that interest accrued on those amounts by operation of law. Ms. Pace-Knapp tried to avoid what she believed was an unnecessary appeal and to simply have the trial court make clear that the judgment statutes were not being contravened by her orders. Once the trial court made clear that this would not occur and it was clear that the trial court was entering what constituted final orders in the case, Ms. Pace-Knapp timely filed her appeal from those orders, which are the proper orders from which to appeal. The FOFCOL entered in 2006 as a final judgment did not preclude interest on attorneys' fees and costs post-judgment and neither did the Judgments entered in 2009 and 2011. Thus, it was not until the trial court made clear by entering Orders denying clarification and reconsideration that it was effectively allowing the Defendants to avoid paying statutorily required interest that the matters were appropriate for appeal and determination by this Court.

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D. Ms. Pace-Knapp is entitled to her attorneys fees and costs on appeal.

Ms. Pace-Knapp reiterates that she is entitled to her attorneys' fees and costs on this appeal. She was forced to file this third appeal in large part because the Defendants have refused to comply with the collection statutes. Wash. St. Physicians Ins. Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993); Wilkinson v. Smith, 31 Wn.App. 1, 639 P.2d 768, *review denied*, 97 Wn.2d 1023 (1982); Landberg v. Carlson, 108 Wn.App. 749, 758 33 P.2d 406 (2001), *review denied*, 146 Wn2d 1008, 51 P.3d 86 (2002) ("If fees are allowable at trial, the prevailing party may recover fees on appeal as well.")

CONCLUSION

For the reasons set out above, Vila Pace-Knapp respectfully requests that this Court render a finding that:

1. Ms. Pace-Knapp is entitled to interest on the entire Judgment amount (except pre-judgment interest), including attorneys fees and costs, dating from December 1, 2006.
2. Ms. Pace-Knapp is entitled to her attorneys' fees and costs incurred in trying to lift the stay and to otherwise enforce and collect on the Judgment in the originally requested amount. Further, Ms. Pace-Knapp is entitled to all of her reasonably incurred attorneys' fees and costs

incurred in enforcement and collection subsequent to the taking of this appeal in a dollar amount to be determined by the trial court on remand.

3. The trial court erred when it released the funds held by the Court Registry to the Defendants.

4. Ms. Pace-Knapp's lost equity occurred on October 26, 2001 and not October 26, 2002. Thus, the calculations used in the Judgment to determine the amount of interest accrued on the lost equity is incorrect and should be corrected to reflect the actual date of the loss. This would result in a new Judgment being entered which provided for payment to Ms. Pace-Knapp for the interest incurred from October 26, 2001 to October 26, 2002 on the lost equity.

5. Further, Ms. Pace-Knapp is entitled to her attorneys' fees and costs incurred in bringing this appeal.

Respectfully submitted this 7th of November 2011.



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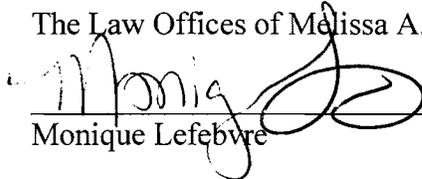
I, Monique Lefebvre, declare as follows:

1. I am over the age of eighteen years, a citizen of the United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on November 7, 2011 a copy of the Plaintiff Vila Pace-Knapp's Reply to Respondent's Brief in Opposition to the Court of Appeals-Division I and a Certificate of Service of same were delivered via U.S. Mail to Bernard G. Lanz, The Lanz Firm, P.S., 1200 Westlake Avenue North, Suite 809, Seattle, Washington 98109. The Certificate of Services is attached hereto.

This Declaration made under penalty of perjury under the laws of the United States of America this 7th day of November 2011 at Seattle, Washington.

The Law Offices of Melissa A. Huelsman, P.S.



Monique Lefebvre