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No. 72496-7

COURT OF APPEALS
DIVISION I OF THE STATE OF WASHINGTON

JULIE ANN THOMAS, a single woman,

Appellant,

v.

J. R. LeVASSEUR and DONNA LOUISE LeVASSEUR,
husband and wife, individually and the
marital community composed thereof,

Respondents.

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I

BRIEF OF RESPONDENTS

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I. INTRODUCTION

Defendants/Respondents, J. R. LeVasseur and Donna LeVasseur, are the parents of Plaintiff/Appellant, Julie Thomas. Ms. Thomas has filed two lawsuits against her parents wherein Ms. Thomas asserts she is the owner of certain real property located in Washington that is titled in the LeVasseurs' names. The first lawsuit, which was dismissed on summary judgment, yielded two separate appeals—including the instant appeal. The second lawsuit, which is currently pending in King County Superior Court, has already yielded two appeals of its own, and an additional appeal by Ms. Thomas seems likely in the future.

The LeVasseurs have been involved in numerous real estate transactions throughout their lives. They have purchased residential, business, and investment properties. The LeVasseurs have placed some properties in Trust, were and/or are joint owners of some properties, and were and/or are the sole owners of other properties. For example, the LeVasseurs placed a residence in Maine and a gravel mine in Oregon in trust for the benefit of family. And they have been involved with Ms. Thomas in the ownership of a residence in Olympia (aka the Cooper Point property) and some vacant lots in Port Ludlow. But the two lawsuits filed by Ms. Thomas concern only two specific properties: (1) a Seattle condo

(part of the first and second lawsuit); and (2) a single family residence in Port Ludlow (part of the second lawsuit only).

The following chronology outlines facts relevant to the parties' relationship and Ms. Thomas' claims that she is the true owner of the Seattle condo and Port Ludlow residence (ownership claims that Ms. Thomas denied in a prior lawsuit brought against Ms. Thomas by two of her creditors):

- July 1, 1997: LeVasseurs purchase the Port Ludlow residence.
- March 6, 2001: LeVasseurs execute a Qualified Personal Residence Trust ("QPRT") re: Port Ludlow residence, which QPRT is intended to benefit Ms. Thomas.
- May 30, 2001: Deeds transferring the Port Ludlow residence to QPRT are recorded.
- April 6, 2005: Deed to Port Ludlow view lots are recorded (Ms. Thomas and her now ex-husband were on title with the LeVasseurs).
- August 30, 2005: Ms. Thomas and her now ex-husband open a \$2,000,000.00 home equity line of credit

("HELOC") with U. S. Bank secured by a residence Mr. and Ms. Thomas owned in Sun Valley, Idaho.

- November 23, 2005: Mr. and Ms. Thomas obtain a loan from CitiMortgage in the amount of \$4,990,000.00, which loan is also secured by the Idaho residence.
- November 23, 2005: Part of the CitiMortgage funds are delivered to U. S. Bank to pay off the HELOC and Mr. and Ms. Thomas sign a document with CitiMortgage indicating that their understanding was the HELOC with U. S. Bank would be closed.
- January 2006: Mr. and Ms. Thomas discover the HELOC was never closed and they begin borrowing against it.
- August 20, 2007: Deed to the Cooper Point residence is recorded (Ms. Thomas and her now ex-husband were on title with the LeVasseurs).
- March 3, 2010: Ms. Thomas files for divorce from Mr. Thomas in King County Superior Court.
- March 6, 2011: The Port Ludlow residence arguably becomes Ms. Thomas' per the QPRT.

- April 7, 2011: Decree of Dissolution entered in Thomas divorce case.
- April 2011: The LeVasseurs, through their business, L&L Machinery, pay over \$120,000.00 to Ms. Thomas' divorce lawyer and to Mr. Thomas to settle divorce.
- June 17, 2011: U. S. Bank files suit against CitiMortgage, Mr. Thomas, and Ms. Thomas re: Sun Valley residence debt (the main issue in that litigation appears to be whether U. S. Bank or CitiMortgage has the lien with first priority).
 - o Per an Idaho Supreme Court Opinion filed October 29, 2014, "By June of 2011, the Thomases owed U. S. Bank over \$2 million for draws on the HELOC. Predictably, the Thomases defaulted on both the HELOC and the CitiMortgage Loan. When preparing to foreclose on its Deed of Trust in 2011, U. S. Bank discovered the CitiMortgage Deed of Trust and this litigation ensued."
- March 12, 2012: Ms. Thomas enters a contract to purchase the Seattle condo.

- March 27, 2012: The LeVasseurs are substituted in for Ms. Thomas as buyers of Seattle condo.
- May 9, 2012: A Quit Claim Deed executed by Ms. Thomas as Trustee of QPRT conveys the Port Ludlow residence to the LeVasseurs.
- May 14, 2012: A Statutory Warranty Deed conveying the Seattle condo to the LeVasseurs is executed by the seller.
- May 21, 2012: The LeVasseurs obtain a loan in the amount of \$357,000.00 from U. S. Bank, which loan is secured by the Port Ludlow residence, and loan funds are designated for closing of the Seattle condo purchase and sale transaction.
- May 29, 2012: Ms. Thomas testifies under oath in the Idaho lawsuit that she does not own any real property in Washington and she is not the beneficiary of any type of trust.
- May 6, 2012: Ms. Thomas obtains a loan in the amount of \$500,000.00 from William Shaw, a friend of Ms. Thomas'.
- August 8, 2012: The Deed conveying the Seattle condo to the LeVasseurs is recorded.

- September 1, 2012: The LeVasseurs authorize/obtain a loan in the amount of \$475,000.00 with Pyatt Broadmark, which funds are transmitted to Ms. Thomas for use in her interior decorating business.
 - o In addition to having the LeVasseurs authorize the Pyatt Broadmark loan so that it could be secured by the Seattle condo, Ms. Thomas personally guaranteed the loan. However, Ms. Thomas failed to disclose to Pyatt Broadmark the existence of the Idaho lawsuit she was involved in at the time with U. S. Bank and CitiMortgage—the guaranty agreement specifically requested disclosure of “any and all Litigation.”
- February 25, 2013: Ms. Thomas wires \$250,000.00 to Mr. Shaw.
- March 4, 2013: Ms. Thomas once again testifies under oath that she does not own any real property in Washington.

- July 5, 2013: Judgment in favor of U. S. Bank entered against Mr. Thomas and Ms. Thomas in the amount of \$2,222,458.47.
- September 30, 2013: Doug Bain, another friend of Ms. Thomas' (now her fiancée), pays off the Pyatt Broadmark loan.
- January 29, 2014: Ms. Thomas files lawsuit number one against her parents requesting title to the Seattle condo—
Ms. Thomas files a Lis Pendens with her Complaint.
 - o Despite Ms. Thomas' testimony on March 4, 2013, that she did not own any real property in Washington, she alleged in her January 29, 2014, Complaint that, "On or about June 8, 2012, Thomas purchased in fee a residential condominium and related interests located in Seattle..."
- April 17, 2014: The LeVasseurs prevail in the first lawsuit on summary judgment.
 - o The Court entered findings and conclusions indicating the Lis Pendens was unjustified, that Ms. Thomas and her counsel violated CR 11, that fees

incurred by the LeVasseurs were reasonable, and that it was appropriate to reimburse the LeVasseurs for all of their attorneys' fees pursuant to either CR 11 or the lis pendens statute.

- April 23, 2014: Ms. Thomas appeals the April 17, 2014, Order (Appeal #1).
- May 22, 2014: Ms. Thomas files lawsuit number two against her parents claiming ownership of the Seattle condo and of the Port Ludlow residence.
 - o Despite Ms. Thomas' testimony on May 29, 2012, and again on March 4, 2013, that she did not own any real property in Washington, she alleged in her May 29, 2012, Complaint that she is the owner of the Port Ludlow residence.
- July 15, 2014: The LeVasseurs file a motion in the first lawsuit to enter judgment and cancel the Lis Pendens (hearing is set for July 23, 2014).
- July 22, 2014: Ms. Thomas files a Lis Pendens against the Seattle condo in the second lawsuit.

- August 26, 2014: The Court in the first lawsuit enters judgment against Ms. Thomas and her counsel for the full amount of fees requested by the LeVasseurs—and although the Court “concludes it is authorized to cancel the Lis Pendens,” the Court “Reserved” ruling “pending appeal” on the cancellation issue and ordered that “[Ms. Thomas] shall file a supersedeas bond in the amount of \$950,000.00 pending appeal.”
- September 5, 2014: Ms. Thomas appeals the August 26, 2014, Order (Appeal #2)
- September 5, 2014: Ms. Thomas releases her Lis Pendens instead of posting a bond.
- October 3, 2014: The LeVasseurs file a Motion to Cancel the Lis Pendens filed in the second lawsuit and request fees (in an amount to be determined later) pursuant to the lis pendens statute.
- October 29, 2014: The Idaho Supreme Court remands Sun Valley litigation back to trial court level re: which bank has first priority.

- October 31, 2014: The Court in the second lawsuit cancels the second Lis Pendens, determines the Lis Pendens was unjustified, and determines it is appropriate to award fees.
- November 20, 2014: Ms. Thomas' Motion for Reconsideration of the October 31, 2014, Order is denied.
- December 10, 2014 – December 17, 2014: The LeVasseurs learn about the Idaho litigation (which they found out through their own investigation) and obtain transcripts from Ms. Thomas' prior deposition(s) wherein Ms. Thomas denied ownership of any real property in Washington.
- December 17, 2014: Counsel for the LeVasseurs informs Ms. Thomas' counsel that the LeVasseurs are now aware of Ms. Thomas' prior testimony.
- December 17, 2014: Ms. Thomas appeals the October 31, 2014, and November 20, 2014, Orders (Appeal #3).
- December 19, 2014: The Court in the second lawsuit enters judgment against Ms. Thomas only (the LeVasseurs did not request that judgment be entered against Ms. Thomas' counsel) pursuant to the lis pendens statute.

- December 29, 2014: Ms. Thomas appeals the December 19, 2014, Order and Judgment (Appeal #4).
- December 31, 2014: The LeVasseurs file a Motion for Summary Judgment in the second lawsuit based on judicial estoppel and related arguments that Ms. Thomas is not entitled to equitable relief (the hearing is set for February 27, 2015).

Ms. Thomas and her counsel violated CR 11—a ruling subject to Ms. Thomas’ first appeal, but that is not part of this second appeal. And Ms. Thomas’ Lis Pendens was unjustified—here again, a ruling that is not part of this appeal. Based on the Superior Court’s rulings as reflected in the Order dated April 17, 2014, it was appropriate for the Superior Court to enter a judgment for fees and require Ms. Thomas to post a bond to secure her appeal. The LeVasseurs request that all Orders of the Trial Court be affirmed.

II. STATEMENT OF THE CASE

A. The April 17, 2014, Order.

The LeVasseurs’ Motion for Summary Judgment, which resulted in the April 17, 2014, Order, requested an Order: (1) confirming the LeVasseurs are owners of the Seattle condo; and (2) awarding the

LeVasseurs reasonable attorneys' fees pursuant to CR 11 and/or RCW 4.28.328 (the lis pendens statute). *See* CP 35-47. The LeVasseurs filed a fee declaration supporting the amount of their fee request with their Motion for Summary Judgment (March 11, 2014, Declaration of Fees) and with their Reply on Motion for Summary Judgment (April 7, 2014, Amended Fee Declaration). *See* CP 130-140 and 278-292. Ms. Thomas did not challenge the reasonableness or necessity of the LeVasseurs' claimed fees in Ms. Thomas' Response to Motion for Summary Judgment. *See* CP 141-155. No additional fees were requested on the LeVasseurs' Motion to Enter Judgment and Remove Lis Pendens. *See* CP 380-385.

1. Ownership of the Seattle condo.

In granting the LeVasseurs' Motion for Summary Judgment, the Trial Court specifically found, "there is sufficient evidence establishing that the Statutory Warranty Deed, which reflects [the LeVasseurs] own the [Seattle condo], is correct." The Trial Court also found Ms. Thomas failed to submit evidence to defeat the LeVasseurs' Motion and concluded no reasonable trier of fact could find for Ms. Thomas. *See* CP 364-367.

2. Attorneys' Fees.

The Trial Court identified two bases to award fees: CR 11 and/or the lis pendens statute. The Trial Court found "that numerous allegations

contained in [Ms. Thomas'] Complaint are not well grounded in fact" and that Ms. Thomas' counsel should have discovered the untruthfulness of such statements prior to filing the Complaint. The Trial Court also found that Ms. Thomas' Complaint and Lis Pendens were not justified and only filed to cause delay. *Id.*

The Court reserved entering the amount of fees to be awarded, but found "the costs and expenses incurred by [the LeVasseurs], including attorneys' fees, were reasonable and necessary..." And the Trial Court concluded, "an award in favor of [the LeVasseurs] reimbursing them for all of their attorneys' fees is appropriate..." *Id.*

B. The August 26, 2014, Order.

The second lawsuit (and subsequent discovery of prior inconsistent testimony in the Idaho case) adds a weird wrinkle, but focusing on just the first Washington lawsuit—the status at the end of April 2014 was that: (1) the Trial Court had confirmed the LeVasseurs were owners of the Seattle condo; and (2) the Trial Court had determined the LeVasseurs were entitled to be reimbursed for all of their fees. However, despite the LeVasseurs prevailing in the lawsuit, Ms. Thomas was not obliged to pay the LeVasseurs' fees (since a judgment had not yet been entered) and Ms. Thomas was getting a free appeal (since a bond had not yet been required).

And costs associated with the Seattle condo were accumulating (e.g., property taxes and HOA fees) with the appeal process in its early stages. So the LeVasseurs were holding a piece of paper (the April 17, 2014, Order), which along with the Statutory Warranty Deed reflected their ownership of the Seattle condo, but they were powerless to act as owners (e.g., they arguably could not attempt to sell their property). The LeVasseurs filed their July 17, 2014, Motion to Enter Judgment and Remove Lis Pendens to rectify the obvious inequity. *See* CP 380-385.

The Trial Court's August 26, 2014, Order entered judgment awarding fees consistent with the April 17, 2014, Order. However, the August 26, 2014, Order did not cancel the Lis Pendens. While the Trial Court concluded it was "authorized to cancel the Lis Pendens" because "[Ms. Thomas] has not requested to stay the enforcement of the [April 17, 2014] Order," the Trial Court indicated cancellation was "Reserved pending appeal." But the Trial Court did state, "[Ms. Thomas] must request a stay and post an appropriate bond to defer enforcement of the Court's prior decisions." The Trial Court instructed Ms. Thomas to file a \$950,000.00 supersedeas bond. *See* CP 492-494.

The Trial Court's August 26, 2014, Order provided Ms. Thomas with a choice: (1) post a bond; or (2) do not post a bond—thereby

potentially allowing the LeVasseurs to sell the Seattle condo consistent with their ownership (as confirmed on April 17, 2014) despite the Lis Pendens. *Id.* Ms. Thomas chose not to post a bond and she decided to release the Lis Pendens. *See* CP 504-507.

III. SUMMARY OF ARGUMENT

The LeVasseurs requested attorneys' fees in their summary judgment motion that was granted on April 17, 2014—and well before that motion was granted, the LeVasseurs filed fee declarations supporting the amount of fees being requested. Ms. Thomas did not challenge the reasonableness or necessity of the fees requested by the LeVasseurs until after the Trial Court had already ruled that “an award in favor of [the LeVasseurs] reimbursing them for all of their attorneys' fees is appropriate...” Ms. Thomas' challenge of amount of the fee award is untimely. Further, the fees requested by the LeVasseurs are explained in billing entries attached to a fee declaration. The numbers add up and the work is well documented.

The Trial Court had discretion to cancel the Lis Pendens Ms. Thomas filed because Ms. Thomas did not request a stay of the Summary Judgment Order—the effect of which Order was to confirm that the LeVasseurs were owners of the Seattle condo. But the Lis Pendens was

not cancelled outright by the Trial Court. The Trial Court effectively gave Ms. Thomas a choice of posting a bond or releasing her Lis Pendens. Thereafter, Ms. Thomas chose to release the Lis Pendens.

The amount of the bond Ms. Thomas was given the option of posting is moot because Ms. Thomas never requested a stay of the Summary Judgment Order and the Trial Court had discretion to cancel the Lis Pendens without giving Ms. Thomas the option to post a bond in any amount. But to the extent the amount of the bond is an issue that must continue to be argued, the LeVasseurs believe the Trial Court's determination was correct given the nature of the lawsuit (one apparent purpose of the lawsuit was to harass the LeVasseurs, who are elderly and in poor health) and the uncertainties regarding property values. Additionally, the entire bond issue (i.e., whether a bond was required and the amount of the bond) is moot if the Court of Appeals affirms the Trial Court's summary judgment ruling—because in that instance, the underlying appeal would be decided and Ms. Thomas would have no right to maintain her Lis Pendens regardless of whether she posts a bond.

Finally, the LeVasseurs are entitled to recover attorneys' fees on appeal pursuant to RAP 18.1 and RCW 4.28.328 since the award entered by the Trial Court was based in part on the lis pendens statute. The

multiple lawsuits and appeals maintained by Ms. Thomas against her parents are outrageous considering Ms. Thomas' penchant for changing her stories to suit her needs.

IV. ARGUMENT

A. The monetary amount of judgment entered on August 26, 2014, was appropriate pursuant to the April 17, 2014, Order.

The Order and Judgment dated August 26, 2014, referred to the April 17, 2014, Order. The August 26, 2014, Order stated, "The Court further finds that it determined all costs and fees incurred by Defendants were reasonable...this Court is authorized to award attorney's fees and costs consistent with its prior order." *See* CP 492-494.

The April 17, 2014, Order reflected the Trial Court's determination that an award of costs and fees were appropriate pursuant to CR 11 and/or RCW 4.28.328. And as previously mentioned, the April 17, 2014, Order indicated that the Court determined it was appropriate to reimburse the LeVasseurs for all of their costs and fees. *See* CP 364-367.

Ms. Thomas' objection to the amount of fees requested by the LeVasseurs is untimely. Ms. Thomas did not object to the fees requested prior to the April 17, 2014, Order despite fee declarations being filed and served prior to that Order. The Court determined on April 17, 2014, that

all fees requested by the LeVasseurs were reimbursable, but Ms. Thomas did not appeal that portion of the April 17, 2014, Order. The Court of Appeals should affirm the Trial Court's Order regarding fees without further consideration.

In any event, the award of fees is appropriate on its merits under either an analysis of the lis pendens statute or CR 11. RCW 4.28.328(2) provides for an award of "fees incurred in cancelling the lis pendens." RCW 4.28.328(3) provides for an award of "fees and costs incurred in defending the action." And as Ms. Thomas' Opening Brief states at pages 15-16, "When attorney fees are granted under CR 11, the trial court 'must limit those fees to the amounts reasonably expended in responding to the sanctionable filings.'" Appellant's Brief citing *MacDonald v. Korum Ford*, 80 Wn. App. 877, 891, 912 P.2d 1052 (Div. 2 1996).

Here, it was Ms. Thomas' Complaint that was found to violate CR 11 (the Trial Court in the first lawsuit has not even been advised of Ms. Thomas' prior inconsistent testimony in Idaho and still found a violation of CR 11). And the fees requested by the LeVasseurs were all incurred in bringing about the dismissal of the Complaint. Given recent discoveries made by the LeVasseurs (i.e., the Idaho case), Ms. Thomas and her counsel may have gotten off easy by only being sanctioned \$26,280.00.

Further, the total amount of fees was clearly appropriate as an award in successfully defending an action involving a *lis pendens*. RCW 4.28.328(3).

The bills attached to the fee declarations in support of the award of fees are accurate copies of bills and reflect payments made by the LeVasseurs in defense of their daughter's first lawsuit. To the extent the content/descriptions in the bills becomes an issue despite Ms. Thomas' untimely objection, the LeVasseurs contend the bills submitted are appropriately detailed. The bills submitted reflect over \$30,000.00 in total charges, but were self-redacted to just over \$25,000.00. An additional amount was estimated for future time incurred related to the summary judgment hearing, which had not occurred at the time the fee declaration was submitted. The alleged miscalculation Ms. Thomas complains about in her Opening Brief appears to show that the LeVasseurs should have requested an additional \$225.00 on top of what was awarded.

B. The LeVasseurs are entitled to their attorneys' fees on appeal.

The Trial Court found the LeVasseurs were entitled to an award of attorneys' fees pursuant to CR 11 and/or RCW 4.28.328. *Id.* For the reasons set forth above, the Trial Court's decision to award attorneys' fees should be affirmed.

The LeVasseurs additionally request an award of their reasonable attorneys' fees incurred on appeal pursuant to RAP 18.1 and RCW 4.28.328. "If a statute allows an award of attorney fees by the trial court, the statute is normally interpreted as allowing an award of attorney fees to the prevailing party on appeal as well." 14A Wash. Prac., Civil Procedure §37.21 (2d ed.) (citing *Besel v. Viking Ins. Co. of Wisconsin*, 105 Wn. App. 463, 21 P.3d 293 (Div. 3 2001); *Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area*, 134 Wn.2d 825, 953 P.2d 1150 (1998); other citations omitted).

In upholding an award of fees pursuant to the *lis pendens* statute, the Court in *Richau v. Rayner*, 98 Wn. App. 190, 199, 988 P.2d 1052 (Div. 3 1999) additionally awarded the prevailing party their "reasonable attorney fees incurred in arguing this issue on appeal, in an amount to be determined by our court commissioner." *Richau, supra*, (citing RCW 4.28.328(3); *Puget Sound Plywood, Inc. v. Mester*, 86 Wn.2d 135, 144, 542 P.2d 756 (1975)). RCW 4.28.328 is clearly a statute that contemplates reasonable attorneys' fees being awarded on appeal in addition to fees awarded at the trial court level.

When and if this Court affirms the Trial Court's April 17, 2014, summary judgment ruling, including determining that all fees requested

were reasonable and necessary, and related August 26, 2014, award of attorneys' fees, this Court should award the LeVasseurs their reasonable attorneys' fees incurred in arguing this appeal in accordance with the procedures set forth in RAP 18.1. RCW 4.28.328 was one basis for the Trial Court's award of fees and is a basis to award fees on appeal as well.

C. Ms. Thomas did not request a stay of the April 17, 2014, Order and the Trial Court had discretion to cancel the Lis Pendens.

Giving Ms. Thomas the opportunity to maintain her lis pendens by posting a bond was not an error.

In *Beers v. Ross*, 137 Wn. App. 566, 154 P.3d 277 (Div. 2 2007), Division Two held that a trial court had discretion to cancel a lis pendens. There, Ross moved for summary judgment on August 18, 2005 (137 Wn. App. at 572), Ross' Motion for Summary Judgment was granted on September 27, 2005 (137 Wn. App. at 569), Ross moved to cancel a lis pendens on November 23, 2005 (137 Wn. App. at 575), Beers filed a Notice of Appeal on the summary judgment order on November 29, 2005 (*Id.*), and the trial court "later granted Ross's motion to cancel the Beers' notice of lis pendens" (137 Wn. App. 569). Pierce County court records reflect the Motion to cancel lis pendens was granted on December 9, 2005.

Beers argued that cancellation of the lis pendens was improper by virtue of Beers having appealed the summary judgment order. 137 Wn. App. at 575. Division Two recognized that “lis pendens is ‘procedural only; it does not create substantive rights in the person recording the notice,’” (137 Wn. App. 575, quoting *Dunham v. Tabb*, 27 Wn. App. 862, 866, 621 P.2d 179 (Div. 1 1980)) and that it is not clear that rules requiring a supersedeas bond apply to lis pendens (137 Wn. App. 575, citing RAP 8.1(b)(2)). In a footnote, Division Two indicated a lis pendens might automatically terminate when there is a final judgment. 137 Wn. App. at 575 (fn. 3). However, the Court in *Beers v. Ross*, did not “resolve the issue because the Beers did not request a stay.” 137 Wn. App. at 575. The Court held, “the trial court did not abuse its discretion when it cancelled the lis pendens in this case because the Beers did not request a stay.”

Ms. Thomas’ case against her parents mirrors *Beers v. Ross* in that the LeVasseurs prevailed on summary judgment and later moved to cancel the Lis Pendens. Like the Beers, Ms. Thomas is attempting to argue that her Notice of Appeal of the Summary Judgment Order prohibits the Lis Pendens from being cancelled. And like the Beers, Ms. Thomas did not request a stay.

The Lis Pendens may have automatically terminated on April 17, 2014, when the Trial Court granted the LeVasseurs' Motion for Summary Judgment. Clearly, the effect of the April 17, 2014, Order was to confirm that the LeVasseurs owned the Seattle condo and could exercise all rights of ownership—including the ability to transfer the property to a third party via a purchase and sale transaction. But whether or not the Lis Pendens automatically terminated, Ms. Thomas is not entitled to maintain the Lis Pendens because she did not request a stay.

The LeVasseurs requested that the Trial Court cancel Ms. Thomas' Lis Pendens, just as Ross had in *Beers v. Ross*. The LeVasseurs only argued that a bond be required as an alternative to flat out cancelling the Lis Pendens. The Trial Court's August 26, 2014, Order agreed with the LeVasseurs that the Court had authority to cancel the Lis Pendens, but that Order did not cancel the Lis Pendens. Instead, the Trial Court gave Ms. Thomas the opportunity to preserve her Lis Pendens by posting a bond. The LeVasseurs would have preferred that the Court simply cancel the Lis Pendens, but see no error in the Trial Court giving Ms. Thomas the opportunity to post a bond. Ms. Thomas chose not to post the bond.

The holding in *Beers v. Ross, supra*, reflects that the standard of review on this issue is an abuse of discretion standard. There was no

abuse of discretion. And even if there was any error in allowing a bond, it was harmless because the Lis Pendens should have simply been cancelled. Ms. Thomas had no right to maintain the Lis Pendens since she did not request a stay. The bond issues are ultimately moot as they would not be issues at all had the Trial Court simply cancelled the Lis Pendens, which it had authority to do. And the bond issues will be moot if and when the Court of Appeals affirms the Trial Court's Order Granting Summary Judgment—a ruling Ms. Thomas appealed previously and, as of the date this brief is being drafted, is pending separate from the instant appeal.

D. The amount of the bond the Trial Court gave Ms. Thomas the opportunity to post was an appropriate value.

RAP 8.1(c)(2) provides the following, in relevant part:

The supersedeas amount shall [include] the amount of the loss which the prevailing party in the trial court would incur as a result of the party's inability to enforce the judgment during review. Ordinarily, the amount of loss will be equal to the reasonable value of the use of the property during review...If the property at issue has value, the property itself may fully or partially secure any loss and the court may determine that no additional security need be filed or may reduce the supersedeas amount accordingly.

In this case, the parties agree the Seattle condo is worth at least \$950,000.00. And clearly, Ms. Thomas' preference is to deprive her parents of the benefit of this asset for as long as she can. There is no

guarantee what the Seattle condo might sell for in the future, but there is no dispute the LeVasseurs do not have anything right now except for mounting bills (e.g., HOA dues and taxes).

A still unanswered question in this litigation is: why does Ms. Thomas object to selling the condo when nobody lives there and holding onto it costs money? The LeVasseurs repeatedly offered to sell the condo in a cooperative fashion (e.g., involve Ms. Thomas in selecting a realtor and setting a list price) and deposit all proceeds of sale into the registry of the court pending resolution of the lawsuit(s). The LeVasseurs reiterated this proposal in their supplemental briefing dated August 6, 2014, regarding the amount of the supersedeas bond. *See* CP 481-484. Agreement was never reached and Ms. Thomas never explained why she refused to cooperate. Ms. Thomas could have avoided the bond issue altogether had she agreed to a collaborative sales process.

The LeVasseurs can only conclude based on Ms. Thomas' actions that her main motivation for prosecuting the lawsuits is to harass the LeVasseurs. The LeVasseurs are old and in poor health, and Ms. Thomas wants to make their final days as miserable as she can. She desires her parents to spend their time and money on litigation. And she would like to tie up a significant amount of their wealth for as long as possible.

It is a fact that as long as the LeVasseurs continue to own the Seattle condo, they must pay the property taxes and HOA dues. Also, the LeVasseurs must continue to service loans (e.g., the loan secured by the LeVasseurs' Port Ludlow residence, which funds were used to purchase the Seattle condo), and would like to use money from the sale of the Seattle condo to pay off such loans. The LeVasseurs would like to sell the Seattle condo so they can reduce monthly expenses and use their remaining cash reserves for something other than maintaining a vacant condo.

This despicable situation created by Ms. Thomas (i.e., the harassment of her parents and the toll taken on them by these frivolous lawsuits) must be accounted for. Add that consideration to the fact nobody can guarantee what the Seattle condo may sell for in the future (i.e., if Ms. Thomas were to get her way and delay sale), and the Trial Court's decision regarding the amount of bond appears reasonable.

Finally, it bears repeating that the supersedeas bond issues are moot. Fairness calls for the cancellation of the Lis Pendens, the Trial Court had authority to cancel the Lis Pendens, and the series of events triggered by the LeVasseurs' Motion to Enter Judgment and Remove Lis Pendens resulted in Ms. Thomas releasing the Lis Pendens. The Trial

Court should have simply cancelled the Lis Pendens in the first place and not bothered with giving Ms. Thomas the opportunity to post a bond and one more thing to complain about. And if the Court of Appeals affirms the Trial Court's Summary Judgment Order, there is no reason to consider any issues related to the bond.

V. CONCLUSION

There is no reason why the Seattle condo should not be sold. Nobody lives there (Ms. Thomas lives with her fiancé now). But while the Seattle condo sits vacant, costs pile up, such as taxes and HOA dues. It is absolutely the correct decision to allow the LeVasseurs to sell the Seattle condo. Moreover, Ms. Thomas never requested to stay enforcement of the April 17, 2014, Order confirming that the LeVasseurs own the Seattle condo.

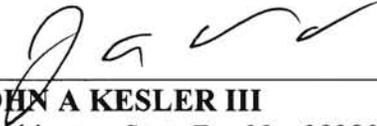
It was also the correct decision to award the LeVasseurs their fees in the amount of \$26,280.00. The Trial Court determined on April 17, 2014, that an award of fees was appropriate pursuant to CR 11 and/or RCW 4.28.328. And the Trial Court also determined on April 17, 2014, that fees in the amount \$26,280.00 were reasonable and necessary—Ms. Thomas had made no argument to the contrary at that time. The fee declarations submitted by counsel for the LeVasseurs support the Trial

Court's Orders of April 17, 2014, and August 26, 2014. Fees should also be awarded on appeal pursuant to RAP 18.1 and RCW 4.28.328.

The LeVasseurs request that the Court of Appeals affirm all Orders of the Trial Court.

RESPECTFULLY SUBMITTED this 16th day of January 2015.

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DECLARATION OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing document on all parties or their counsel of record on the date below as follows:

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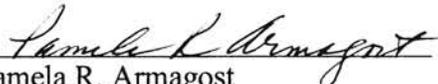
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16th day of January, 2015, at Olympia, Washington.


Pamela R. Armagost