

Cause No. 72919-5-1

IN THE COURT OF APPEALS, DIVISION 1  
STATE OF WASHINGTON

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SONJA O. BEAL and ROBERT E. BEAL

Respondents,

v.

RICHARD CAMPBELL and REBECCA LEE MARCY

Appellants.

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Appeal from King County Superior Court

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REPLY BRIEF OF APPELLANT / CROSS RESPONDENT

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Richard Campbell  
Pro Se  
425-241-8663

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## 1. INTRODUCTION

Respondent's brief fails to address the major elements of the appeal.

1. **By law, there can be no breach of covenant without the finding of paramount title in a third party** and such paramount title was denied when the trial court denied adverse possession for Lopez. *Nowhere* in Respondent's Brief does Beal mention the fact that Lopez was denied adverse possession by the trial court. Instead, Beal side-steps with the argument that the "inevitable result" of adverse possession provides an exception, but that argument is ridiculous in face of the fact that adverse possession can't be "inevitable" when it was already denied.

2. **Beal's pre-tender to defend 6-months prior to filing the attendant suit to quiet title was improper.** Beal cites no authority that pre-tender is appropriate, and instead falsely argues that, because Campbell responded, tender must have been proper.

3. **Campbell cited extensive evidence of his defense of title,** including numerous court filings and appearances. Beal makes no attempt to deny the evidence or to explain how Campbell's litigation was not defense of title. Instead, Beal makes the off-target argument that Campbell's pro se defense triggered an improper "conditional acceptance". Pro se defense is not an issue; it is a red herring.

**4. The law in Washington is that each side pays their own attorney fees in a breach of covenant action,** per *Mellor v. Chamberlin*. Page after page of Beal's brief argues that fees in their pursuit of Campbell were "proximately caused" by Campbell, but that's irrelevant in the face of *Mellor's* flat out denial of such fees. Beal's only real argument, buried near the end of their "proximate cause" diatribe, is that *Edmonson v. Popchoi* overrules *Mellor*, but rather than offer Shepard's Citations, Beal offers only errant personal opinion.

**5. The use of a "hypothetical vacant land" valuation method instead of a market value method has no legal basis** and Beal makes no attempt to offer any. The Stoebuck authority that Beal does reference specifically lists "fair market value" and an essential element in determining damages, thus supporting Campbell's position and refuting "hypothetical valuation". Mostly, Beal argues the irrelevant issue of appraiser Sestrap's expertise.

## 2. REPLY ARGUMENT

### 2.1 Breach of Covenants was not established at summary judgment.

#### 2.1.1 After prevailing over Lopez, Beal cannot argue Lopez should have prevailed.

Beal prevailed over Lopez when the trial court denied a Lopez motion for adverse possession, CP 343. Much of Respondent's Brief is based on argument that adverse possession for Lopez was an "inevitable result", but after prevailing over Lopez and defeating adverse possession at summary judgment, Beal is prohibited by law from reversing position and prevailing against Campbell on the argument that Lopez *should have* prevailed.

It is axiomatic that a grantee may not recover from the grantor on any of the covenants [of RCW 64.04.030], including the covenant to defend, unless it is somehow established that the third person who claims a superior right has it. This is simply another way of saying that the grantor is liable only if there is in fact a breach of covenant. Ordinarily, the third person's right will be established in a lawsuit in which the third person's superior right is adjudged . . . **It is ironic that, to win, the grantee must lose.** *Erickson v. Chase*; 156 Wn. App. at 159, quoting William B. Stoebuck, Washington Practice, Real Estate: Transactions §14.4 at 125-26 (2d ed. 2004)]

The trial court erred in granting breach of covenants, based on argument that adverse possession in Lopez was "inevitable," because a form of judicial estoppel articulated by Stoebuck precludes such double-dealing when grantee has already won the adverse possession dispute.

### **2.1.2 Without third-party paramount title there is no breach of covenants.**

Campbell contends that the trial court erred in awarding summary judgment for breach of deed covenants because paramount title in a third party was not established. Campbell cites *Erickson v. Chase* (2010) [AOB 12] as basis for the requirement and cites *Hoyt v. Rothe* (1917) [AOB 14] for clarification that paramount title, although usually established by the courts, need not be established by the legal process when the result is inevitable. Beal does not disagree. In Respondent's Brief (RB), Beal makes no challenge of *Erickson* and mirrors Campbell's cite of *Hoyt* [RB 18-19], so the requirement of paramount title per *Erickson* and *Hoyt* is mutually agreed.

### **2.1.3 "Inevitable result" is refuted by substantial evidence.**

With case law agreed, and with no paramount title for Lopez, the crux question is whether a judicial finding of adverse possession for Lopez was an "inevitable result" if litigation of the issue had continued. Campbell points to the trial court's denial of adverse possession, CP 343, as a denial of paramount title. Beal does not dispute this, and in fact does not mention the court's denial *anywhere* in Respondent's Brief. Beal relies instead upon the unsubstantiated argument of "inevitable result", RB 18-19, had the case not settled. Beal's argument fails because the following substantial evidence refutes "inevitable result" for Lopez:

1. The trial court denied adverse possession. Paramount title cannot be “inevitable” when the court, after hearing evidence and argument, has already denied it, CP 343.

2. Beal rationalized settling with Lopez, explaining “It’s quite possible that they (Lopez) would not have won that case had it been tried, but the parties decided to settle.” RP 241, L21. Beal admitted that the outcome of the dispute was far from inevitable.

3. Beal’s attorney admitted at trial that “Mr. Campbell and I and – both agreed that we – we probably could have defeated this – this adverse possession claim”, RP 240-241, refuting the idea that Beal believed paramount title in Lopez was inevitable.

4. Beal denied hostile possession by Lopez in response to an interrogatory, CP 180. Beal’s *testimony* denying inevitable result trumps Beal’s *argument* now being made for it.

5. Evidence and argument to refute the Lopez claim was presented at the summary judgment hearing, including the Declaration of Sonja Beal showing unmaintained and therefore un-possessed land, CP 267-286, and the brief of Campbell opposing adverse possession, CP 251+. The substantial evidence and argument presented to the court to refute adverse possession also refutes inevitable result.

6. The burden of proof to establish adverse possession is on the claimant, and it is an onerous burden. At trial, claimant (Lopez) would have had to establish possession that was continuous, hostile, open and notorious, actual, and exclusive for a vesting period of 10 years. Contrary to Beal's arguments, establishing adverse possession was far from "inevitable", it was onerous and unlikely.

Beal's only argument<sup>1</sup> in asking the court for an exception to the legal requirement of paramount title in Lopez is the argument of "inevitable result" and that argument is untenable. Because paramount title in a third-party challenger is required to establish breach of covenants and since such paramount title was not established, the trial court erred in finding breach of covenants.

- 1(a). Beal argues "All the evidence before the trial court supported its findings that Campbell breached three covenants of the warranty deed", RB 14, ¶2. To support breach of seisin at RB 16, ¶1, Beal cites CP 385, 390, 395; RP 5-6. The referenced records are argument and declarations of Beal's attorneys, J.B. Ransom and Mary Holleman. The cited records provide little, if any, support for Beal and most of it is argument, not evidence.
- 1.(b) Beal alleges that "at trial Campbell conceded the adverse possession claim", RB 16, ¶2; citing RP 178, 181, but Beal misrepresents Campbell's testimony. In oral testimony, Campbell's use of the phrase "adverse possession" instead of "alleged adverse possession" may have been casual or imprecise, but verbal imprecision is a far cry from concession.

#### **2.1.4 Tendering defense 6-months prior to filing the attendant title action is improper.**

Beals argue that they “effectively tendered the defense to Campbell”, RB 30, ¶3, six months prior to filing the underlying quiet title action. In all of the case law cited by Beal in this litigation, not one party tendered defense of an action months prior to filing the action. Beal simply has basis or authority to support such pre-tender. “Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

As a practical matter, pre-tender cannot be relied upon to accurately anticipate the actual challenge to title, if and when such challenge is filed. In Beal’s suit to quiet title, the stated challenge to title was not adverse possession, it was that Lopez had ownership by deed. The specific Complaint is “Mr. Lopez *had a deed* that states the property in dispute belonged to Mr. Lopez and Ms. Francis”, CP 4, Item 1.19. Ownership by third-party deed constitutes a deed defect covered by title insurance, in contrast to ownership acquired by adverse possession which would not be covered by title insurance. If the Lopez challenge to title were as represented by Beal in their quiet title action, legal costs for the dispute would have been covered by Campbell’s title insurance. Pre-tendering

defense of a challenge that is to be future-defended is improper as a legal matter and as a practical matter, and Beal offers no legal authority to support the pre-tender<sup>2</sup>.

2(a) Beal misquotes *Mastro* in arguing against improper tender of defense. Campbell briefed the court that improper tender of defense precludes breach of warranty, AOB 17, and Beal cites *Mastro v. Kumakichi* to clarify the criteria of proper tender of defense, RB 30. The first *Mastro* criteria Beal cites is that grantee notifies grantor “(1) of the pendency of a *claim*”, RB 30, ¶1, but Beal’s version is altered from the actual criteria that grantor be notified “of the pendency of the *suit against him*”, *Mastro* at 164. Beal’s change of the actual *Mastro* phrase “suit against him” to “claim” is deceitful and inappropriate. Beal lists the four *Mastro* criteria for proper tender, three of which specifically reference litigation (see RB 30). Beal’s pre-tender prior to litigation fails to meet all three of these *Mastro* criteria.

2(b) Beal also misquotes *Mastro* at 163,[RB 30, ¶2] as “the grantee is entitled to recover attorney fees under the warranty to defend”. The actual quote is “the grantee *must make an effective ‘tender of defense’ to the grantor before she* is entitled to recover attorney fees under the warranty to defend.”

2(c) Beal argues that all four *Mastro* criteria of a proper tender need not be met, RB 30, ¶1, but this is incorrect. In *Mastro* the court held that the first three criteria were explicitly met and “we find the letter’s language sufficient to convey the consequences of refusing to defend” such that the fourth criteria was met as well. If four criteria were not necessary, *Mastro* would not have had four.

2(d) Beal falsely alleges that Campbell’s claim of improper tender is being made “for the first time on appeal”. RB 29, ¶2. The trial level claim documentation may be found at CP 22, Issue 1; CP 357, Issue 3; and RP 11, L23 (as detailed in AOB 17).

2(e) Beal raises the argument that Campbell improperly accepted the tender by stipulating conditions [RB 22, ¶4]. The question of if, how, and when Campbell accepted the tender is irrelevant, however, because the tender was

improper. (Even if tender was proper, there is no evidence to support Beal's argument of conditional acceptance. The "evidence" that Beal cites in support of Campbell's alleged conditional acceptance consists solely of attorney Ransom's own oral argument [see RB 23, citing RP 10, 20-21], and some irrelevant references [see RB 22, citing CP 428-430, 453-454, RP 217, 218]. An attorney's oral argument is not evidence.)

2(f) Beal's argument that "Campbell could not condition acceptance of the tender on being allowed to act as Beal's pro se counsel", RB 22, ¶3, is misguided. Campbell never, in any way, suggested representing Beal, and Beal does not cite any record indicating he did.

2(g). Respondent's Brief falsely alleges that (i) the trial court found Campbell made a "conditional" acceptance of Beal's tender of defense, RB 23, ¶3, and (ii) the trial court warned Campbell against pro se defense, RB 23 citing RP 10, but RP10 is Beal's argument, not the trial court's. In granting summary judgment on the claim of breach of the covenant to defend, the trial court gave no indication whether conditional acceptance of the tender, pro se defense, or failure to defend were reasons, RP 26-27, CP 559.

#### **2.1.5. Beal cites no evidence that Campbell failed to defend title.**

Campbell alleges that the trial court erred in awarding summary judgment for breach of covenant to defend on the evidence that Campbell did defend. Appellant's Opening Brief provided extensive evidence of defense of title; citing investigations, declarations, motions, and oral argument in opposition to Lopez and adverse possession. Respondent's Brief argues Campbell failed to defend, RB 22, citing CP 428-430 & RP 218, but the cited records in no way refute the evidence of defense that Campbell cited. CP 428-430 are inapplicable (they do not address defense

of title) and RP 218 is oral testimony by Beal's attorney, Mary Holleman, that in her opinion Campbell did not defend title. Holleman's opinion is not evidence.

The trial court clearly erred at summary judgment in finding Campbell breached the warranty to defend in view of the extensive evidence documenting that Campbell did defend title, especially when such evidence is viewed in a light most favorable to Campbell.

## **2.2 The trial court erred in awarding attorneys' fees in the Beal-Campbell lawsuit.**

### **2.2.1 *Mellor v. Chamberlin* is the law that fees in the Beal-Campbell breach of covenant action are not awardable.**

*Mellor v. Chamberlin*, cited by Campbell at AOB 28, clearly distinguishes fees for pursuing breach of covenant claims from fees for defending title. Beal argues that *Edmonson v. Popchoi* severely limits the *Mellor* ruling on this issue, RB 33, ¶2, but *Edmonson* is inapposite. The issue in *Edmonson* was fees expended in a defense of title action against a third-party challenger, not fees in a breach of covenant action against the grantor. The *Edmonson* quote cited by Beal, is clarified as:

*"Mellor stands only for the rule that the grantor cannot be found to owe attorney fees [incurred by grantee in defense of title] as a result of a breach of the duty to defend if the grantor never received notice or opportunity to fulfill the duty to defend."* RB 33, citing *Edmonson* at 281.

Edmonson was clarifying that typically grantee can recover fees incurred *in defense of title* (not in pursuing grantor) as a result of a breach of duty to defend, except when the grantor never received notice of the litigation. In no way does *Edmonson* address the question of fees in a suit pursuing grantor for breach of covenants, and in no way does *Edmonson* limit *Mellor* on that issue.

The *Mellor* court held “*The statute, RCW 64.04.030, requires grantors to defend title; it does not provide attorney fees to grantees who bring suit [against grantor for breach of covenant].*” *Mellor* at 649. Grantee Beal brought suit against grantor Campbell for breach of covenant. Per *Mellor*, the trial court clearly erred in awarding fees in that breach of covenant action.

Similarly, *Buck Mountain v. Prestwich*, cited in Respondents’ Brief and in Appellants’ Opening Brief, does not address attorney fees for breach of covenant actions and is therefore inapposite. The only two cases Beal cites for the purpose of undermining *Mellor* are both inapposite. On the other hand, *Barber v. Peringer*, AOB 28, is apposite and clearly follows *Mellor* in rejecting fees in a breach of covenant action. The trial court erred as a matter of law in awarding fees in the breach of covenant action, apparently awarding those fees under the erroneous theory they were “proximately caused by Mr. Campbell’s conduct”, RP 259.

**2.2.2 Argument that Beal’s attorneys only spent a “brief moment” on the breach of covenant action is absurd.**

In an apparent attempt to minimize un-awardable fees, Beal argues that “The only time spent ‘prosecuting’ the breach of covenants claims against Campbell prior to the March 25, 2014 settlement with Lopez Francis was *the brief moment* spent drafting the portion of the Complaint regarding the breach of covenant claims”, RB 31-32. This is completely false, to the point of being a frivolous affront to common sense.

Beal filed suit against Campbell to recover damages for breach of deed covenants, not to quiet title. The breach of covenant suit was specific to Campbell, just as the co-filed quiet title action was specific to Lopez. Two summary judgment motions were heard before Judge Bradshaw on the sole issue of breach of covenants, CP 19, 112. The preparation, briefing, and oral argument for those motions was solely for the breach of covenant action as testified by Beal’s attorney Mary Holleman, see AOB 29. Slip listing entries show attorney billings that are clearly for the January 24, 2014 summary judgment hearing (see CP 205) regarding only the breach of covenant action between Beal and Campbell; CP 646, #47506; CP 647, #47793; CP 650, #48743, #48744, #48745, #48746, #48749, #48750, #48751; CP 651, #48752, #48801, #48814, #48815, #48816. Slip listing evidence conclusively establishes that Beal’s attorney’s spent more than a “brief moment”, and in fact billed a

substantial amount of time, to the breach of covenant claim, time for which the trial court erroneously awarded damages.

**2.3 The trial court applied the wrong legal standard to evaluate diminution of property value.**

**2.3.1 There is no legal authority to support a “hypothetical vacant land” valuation method.**

Campbell appealed the trial court’s use of the “hypothetical vacant land” valuation method, arguing that there is no legal basis or authority to support its use, and Respondents’ Brief fails to cite any. “Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” *DeHeer v. Seattle PI*, 60 Wash.2d 122, 126, 372 P.2d 193 (1962).

**2.3.2 The Stoebuck authority cited by Beal supports use of a market value method, not a hypothetical method.**

Beal cites Stoebuck<sup>3</sup> for the proposition that damages for lost property depend on what proportion the “fair market value of that part [that is lost] bears to the fair market value of all the land”, RB 26. Stoebuck’s calculation actually supports Campbell’s argument that the valuation must be based on *fair market value*, not a “hypothetical” value.

3(a). Beal also cites trial level *Edmonson v. Popchoi*, in support of using a hypothetical valuation method, as a case where damages were “the amount

the Popchois paid for the 165 square feet of land to which they lost title, including the enhancement of the value of that property”, RB 25, but Beal fails to mention that the Edmonson value calculation was a trial court determination and was not reviewed on appeal, so of no precedential value.

3(b). If the trial level *Edmonson v. Popchoi* citation were apposite, it would support Campbell’s position, not Beal’s. In Edmonson, “enhancement value” was used because a simple square foot calculation such as would be generated by Beal’s hypothetical valuation approach would not even closely represent the value of the land. The trial court in Edmonson recognized that not every square foot of land has the same value; that land necessary for structures is much more valuable than extra peripheral acreage. This finding supports Campbell’s contention; that the “hypothetical vacant land” method homogenizes the property and erases any differentiation between land of enhanced value (such as the building site in Edmonson) and land of diminished value (such as the vacant brush-covered land at the back of Beal’s property).

3(c). Similarly, Beal cites *Mastro v. Kumakichi* where at trial level “a grantee’s damages award was \$165,284.15 on a sales price of \$750,000.00”, RB 25. The Mastro award was at trial level so the underlying details are not know. The award was not challenged on appeal, so citing it for support is inappropriate.

### **3. RESPONSE TO CROSS-APPEAL**

#### **3.1 Cross-appeal for prejudgment interest.**

Standard of Review: The award of prejudgment interest is reviewed for abuse of discretion. *Scoccolo Const. v. City of Renton*, 158 Wash. 2d 506, 145 P.3d 371 (2006).

### **3.1.1 By law, Beal's prejudgment damages were unliquidated.**

The Washington Supreme Court provides criteria to distinguish liquidated from unliquidated amounts:

...where the amount sued for may be arrived at by a process of measurement or computation from the data given by the proof, without reliance upon opinion or discretion after the concrete facts have been determined, the amount is liquidated and will bear interest. *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 33-34, 442 P.2d 621 (1968)

The monetary value of Beal's damages was evaluated by the court, with reliance on the expert opinion of appraiser Brenda Sestrap. Judge Lum explained, "I find Ms. Sestrap's methodology more persuasive". RP 256. Clearly, the court relied upon expert opinion and the court's own discretion to evaluate damages, therefore the pre-judgment damages were unliquidated.

### **3.1.2 Unliquidated damages bear no prejudgment interest.**

The Washington Supreme Court makes clear distinction between liquidated damages, which bear prejudgment interest, and unliquidated damages, which do not bear prejudgment interest (unless specified otherwise by contract);

The rule in Washington is that interest prior to judgment is allowable (1) when an amount claimed is "liquidated" or (2) when the amount of an "unliquidated" claim is for an amount due upon a specific contract for the payment of money and the amount due is determinable by computation with reference to a fixed standard

contained in the contract, without reliance on opinion or discretion.  
*Prier*. at 32.

In *Prier*, defendant Refrigeration Engineering Co. was found liable in a tort action for negligence in design of an ice rink. The trial court entered judgment against the defendant and allowed interest to accrue from the date of the judgment. Plaintiff Prier appealed, requesting interest from the date of damages, not the date of the judgment, but his appeal was denied.

Prier is directly analogous to Beal; both parties were awarded damages in a tort action, both received interest from the date the damages became liquidated, both parties asked the court to award prejudgment interest for the period when damages were unliquidated, and both parties were properly denied.

### **3.1.3 Beal only cites inapposite law as support.**

Beal cites trial level *Edmonson v. Popchoi* as a case in which prejudgment interest was awarded (RB 34), but Beal fails to mention that the trial level interest award was not challenged on appeal. It is not known whether the trial court considered the prejudgment damages to be liquidated or not, but that is irrelevant because trial level decisions are not precedential.

Beal cite *Foley v. Smith* (RB 34) as another case in which prejudgment interest was paid, but *Foley* is inapposite because in *Foley* the prejudgment damages were liquidated in the amount of \$41,714.24 as

agreed between the parties, *Foley v. Smith*, 14 Wn.285, 288, 539 P.2d 874 (1975).

Beal cites RCW 19.52.010 and RCW 19.52.020 as basis for a 12% interest rate. These RCW statutes are for damages under contract and are therefore inapposite to the case at hand where damages are per statute.

**3.1.4 The trial court did not abuse discretion in denying prejudgment interest.**

The trial court decision to deny prejudgment interest was based on careful consideration of facts and the law, RP 243. The court decision was clearly not an abuse of discretion, and should therefore be affirmed.

**3.2 Cross-appeal for attorney fees in the Beal-Campbell action.**

**3.2.1 *Buck Mountain's* proximate cause does not overrule *Mellor*.**

The question of whether attorney fees may be awarded in a breach of covenant lawsuit has already been fully briefed; establishing that per *Mellor v. Chamberlain* such fees are not awardable.

Beal's cross-appeal for such fees relies entirely on the *Buck Mountain v. Prestwich* finding that recoverable attorney fees include fees "proximately caused by the breach" [RB 36]. The fees in dispute in *Buck Mountain* were fees expended in defending title, not fees expended in pursuing the grantor in a breach of covenant action. If *Buck Mountain* were interpreted as Beal argues, that fees incurred in pursuing the grantor

are proximately caused by breach of covenants, then certainly such fees would have been requested and awarded in *Buck Mountain*. They were not.

Although Beal's "proximate cause" argument is refuted by *Mellor* and unsupported by *Buck Mountain*, it also fails for lack of substance. Beal notes that to establish proximate cause one must show that "but for the defendant's actions the plaintiff would not be injured", with such cause being "unbroken by any superseding cause", RB 37. Campbell's alleged breach of covenants did not cause Beal to incur attorney fees in the breach of covenant suit; Beal's pursuit of Campbell did. There was no compulsion for Beal to file suit against Campbell, and Beal's election to file such lawsuit superseded action by Campbell. Beal could have settled with Campbell as they settled with Lopez. Beal could have let Campbell defend, then looked to Campbell for compensation if Lopez prevailed. Breach of covenant is not the proximate cause of Beal expending fees pursuing Campbell; Beal's lawsuit is.

### **3.2.2 The trial court properly ignored Beal's frivolous argument of equitable indemnity.**

The claim for attorney fees under the doctrine of equitable indemnity is so frivolous that it was not even presented in oral argument and was not mentioned in the trial court Conclusions of Law, see CP 711-712.

Equitable indemnity is precluded on the pleadings and as a matter of law. The Complaint defines the claims to be tried, and Beal's Complaint contains no allegations or counts relating to equitable indemnity. Beal's Complaint against Campbell is limited to breach of warranties, CP 4, item 1.23 & 1.24, and the Conclusions of Law specifies that the only awardable attorney fees are those incurred as damages in defending title, CP 712, Item 10.

Beal makes the argument that in their suit against Campbell they were "forced to brief and argue title issues", thus even if their attorney fees were not recoverable under RCW 64.04.030 for defending title, they are recoverable under the doctrine of equitable indemnity. This argument fails because there is no element of equitable indemnity that is triggered by what an attorney is "forced to argue".

An equitable ground arises "when the natural and proximate consequences of a defendant's wrongful act involve plaintiff in litigation with others and the action generating the expense is instituted by a third party not connected with the original transaction," *Brock v. Tarrant*, 57 Wn. App. 562, 570, 789 P.2d 112 (1990). A plaintiff may as a general rule recover damages from said defendant for reasonable expenses incurred in that litigation, including attorney's fees. Here, there is no litigation with "others". In Beal's suit against Campbell the action

generating the expense (Beal's lawsuit) was not instituted by a third party (there is no third party in the Beal-Campbell dispute), it was instituted by Beal. Fees in the breach of covenant suit do not involve a third party so cannot be awarded under equitable indemnity and they are flatly precluded by *Mellor*, which held that such fees are governed by the American Rule.

### **3.3 Beal's allegation of frivolous appeal is ironic.**

Beal has cluttered this appeal with kitchen-sink arguments that "equitable indemnity" applies, that the amount of attorney effort to prosecute a lawsuit was a "brief moment," that numerous trial level cases are worth citing, and that Campbell's appeal is frivolous. Beal's allegation of frivolous appeal is misdirected.

## **4. CONCLUSION**

Appellant asks the court to deny Beal's cross appeal and affirm the relief requested in Appellants' Opening Brief.

Dated: 5/13/2015 By:   
Richard Campbell, Pro Se

COURT OF APPEAL, DIVISION 1  
STATE OF WASHINGTON

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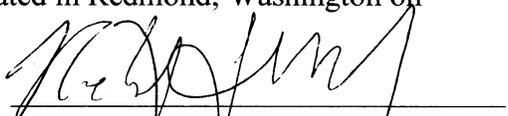
SONJA O. BEAL and ROBERT E. BEAL	)	Cause No. 72919-5-1
Respondents,	)	
v.	)	DECLARATION OF SERVICE
RICHARD D. CAMPBELL & REBECCA	)	
LEE MARCY,	)	
Appellants	)	

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I, Richard Campbell, am over the age of 18 years and state that on May 13, 2015 I caused to be served upon the below named counsel for Beals, by email (per agreement between the parties) at the addresses below a true and correct copy of Reply Brief of Appellant / Cross Respondent.

J. B. Ransom, Winslow Law Group, PLLC; [bill@winslowlawpllc.com](mailto:bill@winslowlawpllc.com)  
Ashton T. Rezayat, Winslow Law Group, PLLC; [ashton@winslowlawpllc.com](mailto:ashton@winslowlawpllc.com)

I certify, under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct. Dated in Redmond, Washington on May 13, 2015.

  
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