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74529-8

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

No. 74529-8-1

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MOUNTAIN HIGH ASSOCIATION OF HOMEOWNERS,

Plaintiffs/Respondents

VS

SAMUEL D. TURNER AND LILLIAN L. RAMBUS, ET AL,

Defendants/Appellants

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APPEAL FROM KING COUNTY SUPERIOR COURT

THE HONORABLE JUDITH H. RAMSEYER

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BRIEF OF APPELLANTS

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Samuel D. Turner

Lillian L. Rambus

303 SW 112<sup>th</sup> St., #411

Seattle, WA 98146

206-766-0603

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON

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ASSIGNMENT OF ERROR

A. Assignment of Error:

1. The Superior Court erred by granting the Plaintiffs' motion for summary judgement under Rule 56 (c ) CRCP, with genuine issues of material fact presented by both parties.
  
2. The Superior Court abused its discretion, by granting the Plaintiffs' motion for summary judgement under Rule 56 (c) CRCP, after denying the Defendants the opportunity and the right to submit documents and exhibits into the record in opposition to the motion for its consideration.

3. The Superior Court abused its discretion, by excepting from its grant of a continuance the timelines for the Defendants to file their opposing documents and exhibits due to the death of the Defendants family member and the tragedy of the 'murder" of another member during this same period.
  
4. The Superior Court abused its discretion, by refusing to allow the Defendants to file their documents and exhibits into the record following the continuance or to make any consideration of the single Affidavit of Samuel D. Turner, filed in opposition to the motion for summary judgment.
  
5. The Superior Court abused its discretion by awarding the Plaintiffs' a judgment and a disputed amount in attorney's fees, without consideration of the Defendants' opposing evidence.

## STATEMENT OF ISSUES

### B. Statement of Issues:

1. Whether Superior Court erred by granting the Plaintiffs' motion for summary judgment under Rule 56 (c ) CRCP, with genuine issues of material fact presented by both parties.
2. Whether the Superior Court erred in granting the Plaintiff's motion for summary judgment under Rule 56(c), CRCP, while denying the Appellants a fair opportunity to respond??
3. Whether the Superior Court abused its discretion, by neither continuing the deadline for the Defendants to file their documents and exhibits nor allowing any of the Defendants' documents and exhibits into the record when it granted the continuance of the hearing date, due to the death of Defendants' family member and the tragedy of the "murder" of another member during the same period??

4. Whether the Superior Court abused its discretion by refusing consideration of the Defendants documents and exhibits filed Defendant Samuel Turner, in opposition to the motion for summary judgment??
  
5. Whether the Superior Court erred by entering judgment in in favor of the Respondents and awarding attorney's fees, while denying consideration of the Defendants' documents and exhibits in opposition??
  
6. Whether this appellate court should reverse the decision of the Superior Court, vacate its judgment and order the trial of this matter??

## STATEMENT OF THE CASE

### A. Statement of Facts :

This is a case that arises from a dispute over monies the Plaintiffs claimed are owed and the payments made by the Defendants. The Plaintiffs are the Mountain High Association of Apartment Owners. The Defendants, Samuel D. Turner and Lillian L Rambus, are a lawfully married couple. (RP, page 2, line 16-21). Since August 2006, they have made their home in the condominium that they own at 303 SW 112<sup>th</sup> Street, Unit 411, in Seattle, WA 98146. (RP, page 6, line 23-24). The unit is in the complex owned by Plaintiffs, who makes assessments obligating unit owners to pay monthly association dues. (PR, page 6, line 6; page 7, line 13). The Defendants disputed Plaintiff's assessment amounts but admitted that their financial circumstances changed, as did their sources of income and their schedule of payments made to the Plaintiffs also changed. (PR, page 7, line 4-25).

The Appellants described their income circumstance as sporadic, which was why they changed their method of payment to occasionally making large payments to stay abreast of the obligation, while the Plaintiffs have described their income as falling behind and leaving a balance due and owing, which the Defendants had tendered payment and some of which were returned in error. (PR, page 7, line 16). (CP).

The parties were continuously disputing the accuracy of the Defendants' account balance. . (PR, page 7, line 16). (CP).

Defendants have also continuously disputed the billings, billing practices, additions to the billing, assessments such as an unwarranted security deposit assessments and disputed the authority of the Association's Board of Directors to make the type of assessments and charges for fees that were believed to be unwarranted, especially the unreasonable attorney's fees charged. (PR, page 11, lines 1- 19).

B. Statement of the Procedural Background:

In June 2015, the Plaintiffs filed a legal action against the Defendants in the Superior Court for King County, and later filed a motion for summary judgment under Rule 56 (c ), CRCP. (CP).

A hearing on the motion was originally scheduled for October 6, 2015, but was later changed (CP). The Defendants requested a continuance of the hearing date, as authorized by Rule 56 (f), CRCP, due to the death of a family member and the tragedy of the ‘murder’ of another member during this same period. (CP).

The Superior Court, the Honorable Judith H. Ramseyer, granted the request and set the new hearing date for December 11, 2015. (CP). But, excepted from the timeline, the deadline for Appellants to file their documents and exhibits in opposition to the motion for summary judgment, contrary to Rule 56 (f), CRCP, and at the urging of counsel for the Plaintiffs. At the hearing on December 11, 2015, counsel for the Plaintiffs further objected to the Court’s consideration of the Affidavit of Defendant Samuel D. Turner or any other evidence of the in opposition to the motion.

## ARGUMENT

This Court of Appeal's standard of review for the rulings of the superior courts' of motions for summary judgment is de novo, engaging in the same inquiry as the superior court itself and under the same circumstance, under Rule 56 (c ), CRCP, in determining the conclusions of law reached by the superior courts. **Hulbert v Port of Everett , 159 Wn. App. 389, 245 P.3d 779 (2011)**. Summary judgment is only appropriate where there are no genuine issues of material fact after the court's consideration of all available evidence in the record. **Hulbert v Port of Everett** , supra. Here, Superior Court, Judge Judith Ramseyer, denied the Defendants' their opportunity to place their documents and exhibits into the record, in opposition to the Plaintiffs' motion for summary judgment.

In fact, the Superior Court selected the evidence for the record for consideration by excluding from the record the Defendants' evidence in opposition, before rendering a judgment. Therefore, summary judgment was not appropriate in this case under this Court of Appeals standard.

Further, in ruling on the motion for summary judgment, the prevailing rule is that the trial court must give the non-moving party a “fair opportunity” to respond, **Sacco v. Sacco, 114 Wn. 2d 1, 5, 784 P.2d 1266 (1990)**, which holding is the controlling rule of law here. The Superior Court did not give that opportunity to respond to the Defendants and then consider the record in making the determination that summary judgment was appropriate. The record had been obstructed, basically manipulated by the Superior Court’s continuance ruling and later at the hearing on the motion for summary judgment on December 11, 2015, Judge Judith Ramseyer feigned to have no option but to enter judgment for the Plaintiffs, due to the Defendants documents. (RP, page 10, lines 1-3). Here is what the judge said:

“.....the documentation was not submitted in a timely way”

The court granted a continuance of the hearing date but denied the purpose and benefit. The continuance would have enlarged the time for the Defendants’ to file their documents and exhibits which would have controverted the Plaintiffs documents and exhibits and required a trial

for a determination of each party's claims showing that summary judgment was clearly not appropriate under Rule 56 (c), CRCP.

as intended by the provisions of Rule 56 (f), CRCP, which states in relevant part:

“...Should it appear .....a party opposing the motion that he cannot, ...present facts essential to justify his opposition...the court may refuse the application for judgment or order a continuance to permit ...to be obtained or may make such other order as is just.”

However, contrary to the expressions and clear objectives of the rule, the Superior Court abused its discretion and excepted the deadline from the period of the continuance for the Defendants to file their documents and exhibits, the purpose and objective of any continuance. The Defendants were essentially not allowed to file anything in opposition and nothing was considered in opposition by the Superior Court. The record was obstructed by the Superior Court's ruling. Counsel for the Plaintiffs, Mark J. Phelps, had openly requested that the court not allow the continuance of the deadline date for the Defendants to file their documents and the

court granted the request, contrary to the expressions of Rule 56 (f), CRCP. In the Washington Courts, a party is not permitted to “ambush” or “obstruct” another party by conduct that would interfere or deny the opposing party a fair opportunity to respond to the motion. **Sacco v Sacco, supra**. That is what happened here!! Further, summary judgment is not appropriate where issues of fact include bad faith of a single party. **LaPlante v State, 85 Wn.154, 159, 531 P.2d 299 (1976)**.

There are a myriad of cases holdings obviating the rule, that summary judgment is appropriate only where there is demonstrated absence of any genuine issue of material fact in the record and the moving party is entitled to judgment as a matter of law. **Larsen v Nelson, 118 Wash. App. 787, 77 P.3<sup>rd</sup> 671 (2003)**. The Plaintiffs could not make the required demonstration in the record, without the Defendants’ documents and exhibits under the circumstances here, for a fair and just determination by Superior Court. The purpose and effect of denying the Defendants was to obtain a judgment with inaccurate and incomplete documents, insufficient to support a contested motion for summary judgment and attorney’s fees.

With of the actions of Mr. Phelps, the function of the Superior Court was to follow the rules of procedure, Rule 56 (c), Rule 56 (f), and to “make such other order as is just” and thereby do justice, **Lewis v Bell , 45 WN. App. 192, 196, 724 P.2d 425 (1986)**. The Superior Court did not follow the court rules. Still worse, the Superior Court also did not follow the instruction of established case law by construing material facts of the case and the actions of Mr. Phelps in the light most favorable to the non-moving party, the Defendants. **Smith v Safeco Ins. Co., 150 Wn.2d 478, 484, 478 P.2d 1274 (2003)**. The Superior Court ignored this Appellate Court’s pronouncements in its decisions.

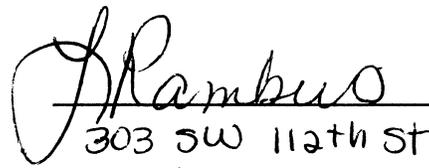
Further, a material fact for purposes of summary judgment under Rule 56 (c), CRCP, is one upon which the “outcome” of the litigation depends. **Marks v Washington Ins. Guar. Ass’n. 123 Wash. App. 274, 94 P.3d 314 (2004)**. The Superior Court erred by failing to consider the gravity of the solicitation by Mr. Phelps, for the court to deviate from the court published rules in making its ruling, as material facts and to draw reasonable inferences therefrom since the solicitation affected the “outcome” of this case. **Marks v Washington Ins. Guar. Ass’n**.

Moreover, the Superior Court not only erred but also abused its discretion. Where the summary judgment standard is applied, judgment should be granted where all of the minds of reasonable persons could not differ as to their conclusion of the outcome. Here, there was but one conclusion and it should be in favor of the Defendants. The minds of all reasonable persons do in fact differs as to the sums claimed to be owed and the sums claimed to be paid, as well as the correct of the amount of attorney's fees, regardless of the number of documents submitted by the Plaintiffs. **Hulbert v Port of Everett** , supra. The Defendant, Lillian Rambus vehemently disputed the amounts claimed to be owed on the hearing date, before being confused by the questions. (RP, page10, line 1 thru page 14, line 16). The Affidavit of Defendant Samuel Turner fully discloses the party's dispute, as well. (CP). The Defendants continue to maintain that the judgment amount is incorrect and that the award of attorney's fees is likewise incorrect.

CONCLUSION:

This Court of Appeals is requested to reverse the decision of the Superior Court for King County, vacate its judgments and order that a trial be conducted for the determination of the claims of the parties.

Respectfully submitted,

  
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COURT OF APPEALS, OF THE STATE OF WASHINGTON

DIVISION I

MOUNTAIN HIGH ASS'N. OF HOMEOWNERS, )

Plaintiff/Respondents, )

CASE NO. 74529-8

VS. )

CERTIFICATE OF

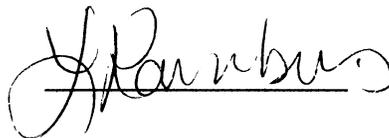
SAMUEL D. TURNER, )

SERVICE

AND LILLIAN RAMBUS, ET AL, )

Defendants/Appellants. )

I certify under the penalty of perjury of the laws of the State of Washington, that on the 25<sup>th</sup> day of July, 2016, a true and correct copy of Appellants' Brief was placed in the U. S. Mail, postage prepaid and addressed to: Mark J. Phelps, 201 Queen Anne Avenue North, Suite 400, Seattle, WA 98109-4824.

A handwritten signature in cursive script, appearing to read "L. Rambus", is written over a horizontal line.