

NO. 74776-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

PAUL SCHMIDT (PRO SE)

APPELLANT,  
VS.

U.S. BANK NATIONAL ASSOC. AS TRUSTEE FOR  
GREENPOINT MORTGAGE FUNDING TRUST MORTGAGE PASS-  
THROUGH,

RESPONDENT

APPELLANT REPLY

KING COUNTY SUPERIOR COURT

OLD CASE NO: 14-2-30297-5-KNT

PAUL SCHMIDT ( PRO SE)

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253-335-2313

10-15-16

2016 OCT 19 AM 9:33  
COURT APPELLANT DIV 1  
STATE OF WASHINGTON  
*[Signature]*

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THE COURT ERRED ON 1-29-2016, WHEN IT REFUSED THE PRO SE APPELLANT SCHMIDT'S REQUEST FOR THE CONTINUANCE OF A HEARING, ENTITLED "PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT" CP-32. RESULTING IN A SUMMARY JUDGEMENT FORECLOSURE. EVEN THOUGH APPELANT SCHMIDT EXPLAINED HE BELIEVED HE WAS THERE TO ARGUE THE AGAINST THE PLAINTIFFS "MOTION" FOR SUMMARY JUDGEMENT. BUT NOT THE ACTUAL SUMMARY JUDGEMENT HEARING ITSELF. THIS PREVENTED POR SE SCHMIDT FROM PRESENTING HIS EVIDENCE. RP 27 3-10 CR 60 B SEE PLESE-GRAHAM V LOSHBAUGH

THE COURT ABUSED ITS DISCRETION WHEN KNOWING SCHMIDT WAS NOT CLEAR ON THE SUMMARY JUDGEMENT RULES. THE JUDGE INSISTED ON ORAL ARGUMENT THEN AND THERE DESPITE THE PRO SE APPELLANT SCHMIDT PROTESTING THAT HE HAD NO NOTES WITH HIM RP 25 8-9 THAT REFERRED TO THE DISPUTED FACTS WHICH HAD BEEN ADDRESSED IN HIS NOTICE OF APPERANCE/ RESPONSE ON 1-8-15 CP-38, RP 25 HERRON V KING BROAD CO / TRUJILLO V NW. TR SERVS.

THE JUDGE ERRED AGAIN WHEN SHE GRANTED THEN REVERSED THE CONTINUANCE WHEN SHE REALIZED THERE HAD BEEN ONE PREVIOUS.

RP22 18-21 CLAIMING NO RESPONSE WAS FILED RP 24 2-5 WHEN IT HAD BEEN. CP 38 BASED ON CONFUSING INSTRUCTIONS FROM THE JUDGE, "WE WILL STRIKE TRIAL DATE AND "RESET AT THE SUMMARY JUDGEMENT HEARING IF NECESSARY" RP10 13-15, RP 12 1-2 TRUJILLO V NW SERVS.

**THE JUDGE MISS QUOTED THE PRO SE APPELLANTS RESPONSE**  
CLAIMING SCHMIDT'S WRITTEN RESPONSE HAD BEEN "YOUR REPOSE WAS I DON'T HAVE TO RESPOND" RP 26 9-10 **THAT IS NOT THE APPELLATES RESPONSE AT ALL. IT WAS IN FACT " I AM OPPOSED TO SUMMARY JUDGEMENT WITHOUT ORAL ARGUMENT AND DO NOT ARGREE TO IT. LCR 56 C 1 THE COURT SHALL DECIDE ALL SUMMARY JUDGMENT MOTIONS AFTER ORAL ARGUMENT, UNLESS THE PARTIES WAIVE ARGUMENT."** CP 38 15-18 CR60 B

WHEN SCHMIDT RESPONDED YES TO JUDGES INSRUCTIONS ON DEC 11, IT BECAME CLEAR ON 1-29 THAT HE HAD MISUNDERSTOOD THE JUDGES UNCLEAR INSTRUCTIONS, PRO SE APPELANTS WRITTEN RESPONSE WAS BASED ON THE ERRONEUS INSTRUCTIONS FROM THE

FIRST HEARING. RP10 13-15, RP 12 1-2 THE TITLE "HEARING OF THE MOTION FOR SUMMARY JUDGEMENT" ADDS TO PRO SE SCHMIDTS CONFUSION LEADING HIM TO BELIEVE IT WAS A 2 STAGE PROCESS.

(1) A HEARING FOR THE MOTION GRANTING OR DENYING SUMMARY JUDGEMENT WOULD TAKE PLACE.

(2) THEN IF GRANTED A SUMMARY JUDGEMENT DATE WOULD BE SET.

MISUNDERSTANDING THE SUMMARRY JUDGEMENT PROCESS HAS BEEN ADRESSED BY LOWER COURTS ADOPTING **LCRLJ56(J)** "A PARTY MOVING FOR SUMMARY JUDGEMENT SHALL, ALONG WITH ITS MOTION FOR SUMMARY JUDGEMENT, SERVE A COPY OF CRLJ56 ON ALL OPPOSING PARTIES WHO ARE NOT REPRESENTED BY COUNCIL IN THE ACTION"

**CRLJ56** STATES THE PURPOSE " TO ENSURE THAT EACH PARTY IS MADE AWARE OF THE FILING DEADLINES AND OTHER NECESSARRY INFORMATION REGARDING SUMMARY SUMARY JUDGEMENT **CR 60** ADDRESSES, MISTAKES, EXCUSABLE NEGLECT, INADVERTANCE.

CR59 SPEAKS OF "SURPRISE IN WHICH ORDINARY PRUDENCE COULD NOT GUARDED AGAINST" AND JUSTICE NOT SERVED.

### **CR60 RELIEF FROM JUDGEMENT OR ORDER**

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
- (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
- (11) Any other reason justifying relief from the operation of the judgment.

### **CR 59. New trial, reconsideration, and amendment of judgments**

**(a) *Grounds for new trial or reconsideration.*** On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

- (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;
- (3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial;

(8) Error in law occurring at the trial and objected to at the time by the party making the application;

(9) That substantial justice has not been done.

### **CASE CITATIONS**

¶72 [\*508] There, the court had before it a motion to dismiss. The issue was whether the district court had abused its discretion in applying certain procedural rules relating to the motion. **The court held the district court had abused its discretion in applying the rule that disadvantaged a pro se litigant.** That is the context in which the Ninth Circuit made the following statement:

[\*\*780] District courts must take care to insure that *pro se* litigants are provided with proper notice regarding the complex procedural issues involved in **summary judgment** proceedings. We hold that where the non-moving party is appearing *pro se*, the notice requirements of **Rule 56(c) must be strictly adhered to** when a motion to dismiss under Rule 12(b)(6) is converted into one for **summary judgment**. *Trujillo v. Nw. Tr. Servs., Inc.*, 181 Wn. App. 484, 507-508, 326 P.3d 768, 779-780, 2014 Wash. App. LEXIS 1343, \*31, 2014 WL 2453092 (Wash. Ct. App. 2014)

**The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.** (Citation omitted.) *Anderson*, 477 U.S. at 255. *Herron v. King Broad. Co.*, 112 Wn.2d 762, 768-769, 776 P.2d 98, 102, 1989 Wash. LEXIS 73, \*12-13, 17 Media L. Rep. 1289 (Wash. 1989)

**The appellate court reviews an order granting summary judgment de novo.** Summary judgment is proper if no genuine issue of material fact remains and the moving party is entitled to a judgment as a matter of law. Wash. Super. Ct. Civ. R. 56(c). The appellate court views all facts in the light most favorable to the nonmoving party. **Summary judgment is appropriate only if reasonable persons could reach but one conclusion from all the evidence.** The appellate court may affirm summary judgment on any ground supported by the record. Plese-Graham, LLC v. Loshbaugh, 164 Wn. App. 530, 534, 269 P.3d 1038, 1041, 2011 Wash. App. LEXIS 2449, \*1 (Wash. Ct. App. 2011)

The summary judgment procedure is a liberal measure, liberally designed for arriving at the truth. **Its purpose is not to cut litigants off from their right of trial by jury if they really have evidence that they will offer on a trial; its purpose is to carefully test this out, in advance of trial, by inquiring into and determining whether such evidence exists.** The object and function of the summary judgment procedure is to avoid a useless trial. A trial is not useless, but is absolutely necessary, when there is a genuine issue as to any material fact. Summary judgment exists to examine the sufficiency of legal claims and narrow issues, not as an unfair substitute for trial. Keck v. Collins, 181 Wn. App. 67, 73, 325 P.3d 306, 309, 2014 Wash. App. LEXIS 1104, \*1, 2014 WL 1797612 (Wash. Ct. App. 2014)

## **CONCLUSION**

LOSING PRO BONO REPRESENTATION JUST A FEW WEEKS PRIOR , WITH NO LEGAL BACKGROUND AT ALL. PRO SE APPELLANT SCHMIDT TRIED TO WADE THROUGH THE LEGAL MAZE, DEALING WITH A COMBINATION OF MISLABELING, MISINFORMATION, LEGAL TERMINOLOGY. CLEARLY PRO SE LITIGANTS MISUNDERSTANDING THE SUMMARY JUDGEMENT PROCESS IS AN ISSUE CLEARLY ADDRESSED BY LOWER COURTS. SCHMIDT

SHOULD NOT LOSE THE RIGHT TO PRESENT THE FACTS IN HIS CASE  
BECAUSE OF ERRORS BY THE COURT IN NOT RECONGNIZING THE  
SITUATION, OR THE MISUNDERSTANDINGS CAUSED BY THE DISCONNECT  
IN LEGAL TERMINOLOGY. THE CASE SHOULD BE HEARD ON ITS MERITS  
IN A NEW TRIAL, BY A NEW JUDGE, WITH THE PROPER EVIDENCE THAT  
ADDRESS THE CASE.

A handwritten signature in black ink, appearing to read "Paul Schmidt". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

PAUL SCHMIDT

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COURT OF APPEALS

DIVISION ONE

NOTICE OF SERVICE APPELANTS REPLY BRIEF

CASE # 74776-2-1

I HAVE ENCLOSED A RECEIPT FOR DELIVERY OF MY REPLY BRIEF TO

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