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COURT OF APPEALS

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STATE OF WASHINGTON

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No. 33091-1-II

IN THE
COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

DAVID CARROLL, STEPHENSON; KENNETH WAYNE;
and MONICA HANSEN,

Appellants,

v.

PAUL TRAUSE; DAVID CAMPBELL;
CHARLES R. TENPAS; JOHN L. KOSTICK; and JAMES H.
HUBENTHAL,

Respondents.

RESPONDENT CAMPBELL'S REPLY BRIEF

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I. STATEMENT OF ISSUES

1. Whether summary judgment was properly granted rejecting Appellants' claims against the City of Chehalis arising from the City's order to cease and desist construction of a building addition without obtaining building permits.

2. Whether summary judgment was properly granted and an injunction issued requiring Appellants to obtain building and electrical permits for construction of an addition to their single family residence.

II. COUNTER-STATEMENT OF CASE¹

A. FACTUAL BACKGROUND

Although one would never discern it from the Appellants' brief, this case is about an individual, Monica Hansen, who constructed an addition to her home without seeking a building permit and was properly ordered to cease and desist by the City of Chehalis. When Hansen failed to do so, and chose not to use the administrative appeals process established by lawful authority, the City requested her electrical service to be discontinued. This lawsuit was filed by plaintiffs in an effort to block the City's and Department of Labor and

¹ Virtually all of the statements of fact made by Appellants' Brief are erroneous and unsupported by intelligible citations to the record. In lieu of itemizing each error, Respondent Campbell offers the following counter-statement of the case.

Industries' efforts to enforce building and electrical permit requirements.

Appellant Monica Hansen owns property located at 79 S.W. 11th Street in the City of Chehalis. CP. 98. Beginning in approximately August 2004, Appellant Monica Hansen engaged in a major construction project at 79 S.W. 11th Street in order to build an addition to the second story of her residence. CP 77.

In August 2004, two building inspectors for the City of Chehalis drove by the property and noticed the construction of the second story addition. CP 76. The inspectors verified that no permit had been issued for this location and called Ms. Hansen, the property owner. CP 77. They informed her that building and electrical permits were necessary for the work that she was doing and requested that she make the required applications. CP 77. The inspectors also took photographs of the unpermitted construction from the adjacent street. CP 80-85.

Ms. Hansen refused to apply for a permit and continued construction. CP 77. On August 10, 2004, the City of Chehalis served Appellant Monica Hansen with a Notice of Nuisance Condition notifying her of the need for a building permit and requiring that all work cease until such a permit was obtained. CP 87. Appellant did

not comply with the directives of the City's Notice, and construction continued at the Hansen residence. CP 77. The ongoing construction was documented in photographs by City staff on September 9, 2004. CP 89-91.

On September 22, 2004, the City of Chehalis served Appellant Hansen with a Notice of Determination and Order to Abate a Dangerous and Substandard Building. CP 103. The Order required Appellant Hansen to immediately cease all construction and apply for a building permit within 30 days. *Id.* The Order also informed Appellant of her rights to appeal pursuant to the Uniform Code for Abatement of Dangerous Buildings. *Id.*

On September 22, 2004, Appellant Monica Hansen submitted to the City of Chehalis a document entitled "Notice of Fault and Opportunity to Cure." CP 109. This document was similar to other documents submitted by Hansen that attempted to impose an administrative process created by Hansen on the City. This document did not request an administrative appeal, nor did it comply with the requirements for filing an appeal under the Uniform Code for Abatement of Dangerous Buildings. CP 98, 123. However, despite these procedural defects, the City notified Ms. Hansen that her submittal would be treated as an administrative appeal and that a

hearing would be conducted before the City Hearing Examiner. CP 98. On October 14, 2004, a Notice of Appeal Hearing was sent to Appellant Monica Hansen notifying her that the hearing would be held on November 18, 2004. CP 115-118.

On or about October 4, the Department of Labor & Industries wrote a letter to Hansen notifying her that it would request Lewis County PUD to disconnect power pursuant to RCW 19.28.101(3) if she did not correct deficiencies and obtain proper permits. CP 120. The letter stated that power was to be scheduled for disconnection on October 20, 2004. *Id.*

Hansen remained undeterred by the notices from the City and L&I and continued with construction. Photographs were again taken by City staff on October 11, 2004 show ongoing construction. CP 93-96.

On or about October 22, 2004, Ms. Hansen received a letter from the City's attorney notifying her that her attempts to establish an alternative administrative process were illegitimate and that she would be provided due process at the hearing before the City Hearing Examiner. CP 73.

On November 18, 2004, a hearing was conducted before the City Hearing Examiner, John McKerricher. CP 99. Ms. Hansen

appeared at the hearing. Despite the repeated admonitions of the Hearing Examiner, Ms. Hansen refused to offer any evidence contravening the City's Notice and Order to Abate. She read a prepared statement and refused to further participate in the hearing. Ms. Hansen even refused to clarify if she was represented by legal counsel after her remarks referred to "counsel." Instead of availing herself of the opportunity to be heard, Appellant filed this suit in Thurston County Superior Court. CP 99-100. The suit was brought against individual Respondents including David Campbell, City Manager of the City of Chehalis; Paul Trause, Director of the Department of Labor and Industries, and the three Commissioners of Lewis County PUD #3, James Hubenthal, John Kostick and Charles Tenpas.² CP 6.

On January 24, 2005, the Hearing Examiner issued a decision affirming the City's Order to Abate a Dangerous and/or Substandard Building. CP 122. Ms. Hansen has not appealed this decision to Lewis County Superior Court. CP 100. The 21 day appeal period under RCW 36.70C.040 expired on February 17, 2005. *Id.*

² Because none of the individuals named were directly involved, references in this brief to the "City" will refer to Respondent Campbell. References to the Department of Labor and Industries refer to Respondent Trause. References to the PUD refer to Respondents Hubenthal, Kostick and Tenpas.

As determined by the Hearing Examiner's decision, Appellant Monica Hansen is in violation of City Ordinance 17.09.100(A) for failing to obtain a building permit before constructing the addition to the residence located at 79 S.W. 11th Street in the City of Chehalis. CP 124. Appellant Monica Hansen is further in violation of the Uniform Housing Code and Uniform Code for Abatement of Dangerous Buildings, as further set forth by the Hearing Examiner's decision. *Id.*

Despite the City's orders to cease and desist and the disconnection of electricity, construction continued at the Hansen residence. CP 100. Portable generators were used to supply power. *Id.*

On December 6, 2004, the City wrote to Appellants requesting immediate dismissal of this action. CP 70. The Appellants were notified that the action was frivolous and would subject them to liability for the City's expenses and attorney's fees pursuant to CR 11 and RCW 4.84.185. Nevertheless, Appellants refused to dismiss their action.

B. PROCEDURAL HISTORY

On January 22, 2005 the City filed its Answer and Counterclaim seeking an injunction against Appellant Monica Hansen from further construction at 79 S.W. 11th Street until a valid building

permit is obtained from the City of Chehalis as well as sanctions under RCW 4.84.185. CP 38.

On March 8, 2005, Respondent Campbell moved for summary judgment on all claims raised by Appellant and on the counterclaim seeking an injunction against Hansen's unlawful construction. CP 53. The motion was noted for consideration on April 8, 2005. *Id.* The motion was supported by the Declarations of Robert Nacht, CP 97, and Don Chambers, CP 76. Additionally, the motion was supported by the Declaration of Jeffrey S. Myers, counsel for Campbell, which attached correspondence to Hansen showing the frivolous nature of the claim and supporting the request for sanctions under RCW 4.84.185. CP 66.

Appellants chose not to respond to the motion for summary judgment and offered no declarations to counter those submitted by the City. CP 491. Instead, Appellants filed a tort claim with the Department of Labor and Industries and filed a motion for a stay. CP 126.³ Appellants noted the motion for consideration a week before the summary judgment hearing. Respondents opposed the stay because the tort claim defense was not relied upon in the motion and

³ Respondents did not raise the failure to file a tort claim as a defense in this matter. In any event, upon receipt of the claim, the Department denied the claim and so notified the court in the Declaration of Shelly Mortinsen. CP 130.

because the Respondents had already denied the claims. CP 141. The City relied upon a second Declaration of Jeffrey S. Myers to explain why the stay should be denied. CP 141.⁴ On April 1, 2005, the court heard the motion in open court and denied the motion for a stay. CP 478.

Despite lacking any briefs, affidavits or other evidence opposing the Motion for Summary Judgment, the court nevertheless considered oral arguments made by Appellants. RP, 4/08/05. The court determined that there was no dispute of material fact and that Respondent Campbell was entitled to dismissal of all claims and was further entitled to summary judgment on his counterclaim seeking a mandatory injunction against further unlawful construction. The court issued an order granting dismissal of all claims on summary judgment and enjoining further construction. CP 490. The court's order also required Hansen to submit building plans and apply for permits within ten days.⁵ CP 493.

⁴ On March 31, 2005, a motion to Strike the Declaration of Jeffrey S. Myers supporting the opposition to the motion to stay was filed. CP 151. At no time, however, did Appellants ever seek to strike the Declaration of Jeffrey S. Myers submitted in support of the Motion for Summary Judgment. Indeed, as noted by Judge Tabor in his oral ruling, no substantive response was ever made to the properly noted summary judgment motion. RP, 4/8/05, at 22.

⁵ Hansen has not complied with the terms of the Court's order during the pendency of this appeal. No permit applications, plans or fees have ever been submitted to the City of Chehalis.

Following the dismissal of all claims against Campbell and the issuance of the order granting injunctive relief, the other Respondents also moved for summary judgment and dismissal of Appellants' claims. Trause's motion relied upon the same declarations presented by Campbell, and the Declaration of Robert Thomas. CP 504, 543, 592. The PUD's motion was supported by the Affidavits of the PUD Commissioners, Charles Tenpas, CP 605, James Hubenthal, CP 607, and John Kostick, CP 603, as well as the Affidavit of David Muller. CP 600. The court granted the summary judgment motions dismissing the remaining Respondents and allowing entry of final appealable judgment.⁶ CP 673. This appeal ensues.⁷

III. STANDARD OF REVIEW

An appellate court's review on summary judgment is *de novo* and may affirm a trial court's decision on summary judgment on any basis supported by the record. *Int'l Broth. of Elec. Workers, Local Union No. 46 v. TRIG Elec. Constr. Co.*, 142 Wn.2d 431, 434-35, 13 P.3d 622 (2000). On *de novo* review from summary judgment, an

⁶ The Court declined to consider the untimely Appellants' Motion for Summary Judgment, which was filed on June 27, 2005 and noted for consideration on July 15, 2005, without the 28 days notice required by CR 56(c). CP 636; RP, 7/15/05 at 3, 29.

⁷ In granting the remaining defendants' motions for summary judgment, the Court intended that entry of the order would be a final judgment of all matters, subject to appeal as a matter of right. RP, 7/15/05 at 41.

appellate court may affirm the trial court on alternate grounds including any theory supported by the pleadings and the record even if the trial court did not consider that theory. *Piper v. Dep't of Labor & Indus.*, 120 Wn. App. 886, 890, 86 P.3d 1231, review denied, 152 Wn.2d 1032, 103 P.3d 201 (2004).

Summary judgment is properly granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. CR 56; *Greater Harbor 2000 v. Seattle*, 132 Wn.2d 267, 278, 937 P.2d 1082 (1997). A material fact is one on which the outcome of the litigation depends in whole or in part. *Atherton Condominium Association, v. Blume Development Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

In summary judgment proceedings, "[t]he facts and all reasonable inferences are considered in the light most favorable to the nonmoving party," *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 690, 974 P.2d 836 (1999). However, the non-moving party may not rest upon allegations or denials, but must set forth specific facts showing the existence of a genuine issue for trial. *Ruffer v. St. Frances Cabrini Hosp.*, 56 Wn. App. 625, 628, 784 P.2d 1288, review denied, 114 Wn.2d 1023 (1990). An affiant must testify to facts based on personal knowledge. *Grimwood v. U. of Puget Sound, Inc.*, 110

Wn.2d 355, 359, 753 P.2d 517 (1988). The nonmoving party's rebuttal must involve specific facts, not speculative or conclusory statements. *Deschamps v. Mason County Sheriff's Office*, 123 Wn. App. 551, 96 P.3d 413 (2004); CR 56(e); *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 612, 62 P.3d 470 (2003).

IV. ARGUMENT

A. APPELLANTS FAILED TO RAISE ANY DISPUTE OF MATERIAL FACT BECAUSE THEY DID NOT CONTRAVENE THE DECLARATIONS FILED IN SUPPORT OF CAMPBELL'S MOTION FOR SUMMARY JUDGMENT.

In considering whether a summary judgment was properly granted, the Court must evaluate whether there was a dispute of material fact. Under CR 56, when confronted with a motion for summary judgment supported by proper declarations, the Appellants were obligated to respond by offering countering affidavits showing a dispute of material fact. CR 56(e) specifically provides that a responding party may not rest on the allegations of its pleadings, but must identify specific facts warranting a trial. If a party that fails to do so, CR 56(e) requires that summary judgment be entered against that party.

Where, as in this case, a party fails to contest the factual allegations set forth in a motion for summary judgment, those facts are deemed established. When a nonmoving party fails to controvert relevant facts supporting a summary judgment motion, those facts are considered to have been established. *Central Washington Bank v. Mendelson-Zeller, Inc.*, 113 Wn.2d 346, 354, 779 P.2d 697 (1989); *Washington Osteopathic Med. Ass'n v. King Cy. Med. Serv. Corp.*, 78 Wn.2d 577, 579, 478 P.2d 228 (1970). Where the facts averred by the moving party are so established due to a lack of response in the trial court, it necessarily follows that on appeal, the appellant cannot establish that the court erred because there was an issue of disputed fact. To accept such an argument, as made by Appellants here, Appellants' Second Amended Brief at 12, would undermine the burdens established by CR 56.

Indeed, Appellants do not cite any evidence that raised a dispute of fact at the time when Judge Tabor granted the City's motion for summary judgment. They cannot because they filed no written opposition to the motion or contravening declarations. Instead, they acknowledge that they relied on their pleadings and oral argument "evidencing ongoing controversy." Second Amended Brief at 2. However, the law is clear that a party cannot rest upon their

pleadings, and statements made during oral argument are not adequate to create a dispute of material fact. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989); *Mackey v. Graham*, 99 Wn.2d 572, 663 P.2d 490 (1983); *Landberg v. Carlson*, 108 Wn. App. 749, 33 P.3d 406 (2001) (oral evidence at summary judgment not admissible).

Their argument that summary judgment was inappropriate due to a dispute of facts is, therefore, wholly specious and frivolous. Indeed, Appellants resort to *ad hominem* personal attacks on the character of the judge to hide their utter lack of any meritorious argument against the City's summary judgment motion.⁸ Given the lack of any affidavits or a brief opposing the City's summary judgment motion, Judge Tabor nevertheless allowed lengthy oral argument by Appellants and rejected their arguments because they had no merit. RP 04/08/05, at 18-21.

Appellants' allegation that the declarations submitted by the City were perjured is unsupported by any evidence and does not create

⁸ Appellants' characterization of Judge Tabor as "wantonly deceitful" is one example of the myriad personal attacks made without any support. Judge Tabor patiently listened to all of Appellants' arguments and, despite the utter lack of any legal basis for such claims, declined the City's request for sanctions under RCW 4.84.185 and CR 11. Their persistent false accusations against Judge Tabor are themselves deserving of sanctions and the City requests that such sanctions be imposed pursuant to RAP 18.9 to protect the integrity of the judicial process from baseless, groundless accusations such as those offered throughout Appellants' brief.

a factual issue about their credibility. Appellants did not challenge the facts asserted or attempt to create an issue in this regard. To raise an issue of credibility, the non-moving party must submit contradictory evidence or otherwise impeach the moving party's evidence.

Cowiche Basin Partnership v. Mayer, 40 Wn. App. 784 (1987). Here, no contradictory evidence or evidence impeaching the City's declarants was submitted. No fact dispute existed and summary judgment was properly granted.

B. SUMMARY JUDGMENT WAS PROPERLY GRANTED ON CLAIMS AGAINST RESPONDENT CAMPBELL.

In reviewing a summary judgment where there is no dispute of fact, the Court should affirm the lower court's ruling if the moving party is entitled to judgment as a matter of law. Here, Appellants do not present any coherent argument why the trial court erred in granting summary judgment as a matter of law.

In their defense, Appellants rely on the City's alleged failure to exhaust an administrative process concocted by Appellants without the sanction of law. At various times, Appellants sent forms to the Respondents demanding a response to various factual allegations under the guise of being an "administrative process." This process was entirely of their own invention and lacked sanction of any force of

law. Appellants were so informed of this by letters submitted by legal counsel for the City and the City declined to participate in such an artifice. CP 73.

Instead of participating in an extralegal process, the City provided notice and an opportunity to be heard before the City Hearing Examiner. Prior to initiation of any lawsuits, the City notified Appellants that it would treat their "Notices of Fault and Opportunity to Cure" as a request for an administrative hearing. Appellants were given over a month to prepare for the hearing and attended. CP 98. However, Appellant Hansen read a statement and stormed out of the hearing, declining to participate further. CP 99. The Hearing Examiner received testimony from the City's personnel and later issued an order upholding the City's orders to cease the unlawful building activity. CP 100.

Appellants again submit their fraudulent forms purporting to be an "Administrative Judgments" against Respondents. Appellants' Brief, Exhibit A, p. 7-20.⁹ These documents have no bearing on the

⁹ These documents create the illusion of legitimacy by stating that Monica Hansen is a "petitioner" and assigning a case number. However, no law or ordinance sanctions such a "petition" and it is directed to Hansen herself as the judge of her own process. To the extent the "administrative judgment", which is executed by a notary public, resembles judicial process, the filing and recording of such documents may constitute the crime of barratry. West's RCWA 9.12.010. See *State v. Sullivan*, 143 Wn.2d 162, 19 P.3d 1012 (2001); *State v. Duffey* 97 Wn. App. 33, 981 P.2d 1 (1999).

correctness of the trial court's summary judgment order in favor of the City. Indeed, these purported documents were not timely submitted to the trial court, which, nevertheless, considered them, and found no basis to reject the motion for summary judgment. RP, 4/8/06 at 20.

1. Declaratory Judgment / Due Process Claims.

Appellants' first claim against Respondent Campbell appears to be that he initiated enforcement action against Appellant Monica Hansen without providing due process¹⁰. CP 23-25. Appellants' claims are without merit and are frivolous.

Procedural due process requires notice and an opportunity to be heard before the government can take a person's liberty or property interests. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 224, 829 P.2d 1099 (1992); *Rhoades v. City of Battle Ground*, 115 Wn. App. 752, 63 P.3d 142 (2002). To be entitled to due process protections prior to government action, a person must face a deprivation of a 'significant property interest' by the government. *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Olympic Forest Prods., Inc. v. Chausee Corp.*, 82 Wn.2d 418, 428,

¹⁰ Respondent Campbell is the former City Manager of the City of Chehalis. The enforcement actions taken were taken by the City's Building Official and Building Inspectors, not Mr. Campbell personally.

511 P.2d 1002 (1973). Where a party refuses to participate in a hearing and avail themselves of the opportunity to be heard, there is no violation of due process. *United and Informed Citizen Advocates Network v. Washington Utilities and Transp. Com'n*, 106 Wn. App. 605, 24 P.3d 471 (2001).

Even if the claim is construed as one against the City, rather than Mr. Campbell, it fails to state a cognizable claim because the Appellants were provided with notice and an opportunity to be heard consistent with due process. The City's code requires Ms. Hansen to obtain a building permit prior to constructing a second story addition, which she failed to do. Hansen was duly notified of the need to obtain building and electrical permits first by City inspectors, and subsequently by the City's Notice of Nuisance Condition. When she did not do so, the City again issued an Order to Abate a Dangerous Building which required her to cease construction, apply for building permits and make any corrections necessary to meet building code requirements. Ms. Hansen was explicitly informed of her right to appeal under the Uniform Code for Abatement of Dangerous Buildings. CP 106.

Hansen was ordered only to stop work and apply for the required permits and obtain inspections for the unpermitted work. CP

105. She was not ordered to remove the illegal addition by either the Notice of Nuisance Condition or the Order to Abate a Dangerous Building. Neither of the City's orders deprived Ms. Hansen of any property right protected by the due process or takings clauses of the Constitution. She has no property right to engage in illegal construction without a valid building permit.

The City, by contrast has every right, and the statutory duty, to require building permits and enforce uniform building codes. RCW 19.27.050. Such requirements have universally been determined to be a constitutional exercise of municipal police power. *Welch v. Swasey*, 214 U.S. 91, 29 S.Ct. 567, 53 L.Ed. 923 (1909); *City of Tribune v. Connelly*, 26 P.2d 439 (Kan. 1933). Regulations of the installation of electrical wiring and apparatus have also been upheld as a proper exercise of the police power. *Town of Pineville v. Vandersypen*, 33 So.2d 56 (La. 1947); *Ferrara v. City of Shreveport*, 702 So.2d 723 (La.App. 1997); 13 Am.Jur. 2d Buildings, § 34.

Most important, however, is the Appellants' failure to avail themselves of the available hearing process established by City codes. The City's Order to Abate a Dangerous Building contained express instructions on how to appeal the City's Order. CP 106. The City even treated Appellant Hansen's vacuous submittals (entitled Notice of

Fault & Opportunity to Cure) as an appeal and convened a hearing to provide the very process that Hansen claims was due. CP 99-100. She was notified that this hearing would provide her an opportunity to be heard and that she could raise any objection to the validity of the City's order before the Hearing Examiner. *Id.* Rather than participate in the hearing, on the day that the hearing was scheduled to be held, Hansen and her cohorts filed this surreal lawsuit alleging that she was denied a due process hearing. *Id.*

It is beyond dispute that Hansen received notice of this hearing, since she appeared. Yet Appellant Hansen made a deliberate and considered choice to squander her opportunity to be heard. Despite requests from the Hearing Examiner and the City's legal counsel, Ms. Hansen read a statement denying any need to participate in the hearing. Then, Appellant walked out of the administrative hearing that provided the due process that she subsequently sued the City Manager for failing to provide. The trial court agreed that this did not allege a valid claim and correctly entered summary judgment dismissing the due process claim.

2. Conspiracy to deprive Appellants of property and liberty.

The Complaint further claimed that Respondent Campbell operates an enterprise known as the City of Chehalis and that all Respondents are part of an "enterprise" known as the State of Washington. CP 24. Appellants next made the outrageous claim that the Respondents have conspired to deprive the Appellants of property or liberty rights as part of an extortion scheme amounting to a "PROTECTION RACKET." CP 24-25. They sought a declaratory judgment to this effect and an injunction preventing Respondents from enforcing the law against them. CP 25. These claims lack any basis in law or fact , were not supported by evidence in response to the summary judgment motion, and are completely frivolous.

Aside from the slanderous labels that abound in the Complaint, Appellants did not present any shred or scintilla of truth or evidence to support these accusations. The City attempted to enforce the building codes that uniformly apply to all its citizens. Instead of complying with these laws, Appellants set themselves up as above the law and attempted to evade the process created by elected representatives of the City of Chehalis by substituting their own illegitimate "administrative process." The Appellants have demonstrated their frequent abuse of the legal process by recording facially fraudulent

"administrative judgments" that they have created themselves and persuaded a notary public to sign. *See, e.g.,* Exhibit A to Second Amended Brief, at 7-15. In so doing, they have demonstrated a contempt for lawful authority leading to their refusal to participate in the procedure adopted by ordinances passed by duly elected representatives of the citizens of Chehalis. *Id.* at 17-18. Appellants are not elected to any office, but have appointed themselves as administrative judges, answerable to no one, and whose acts purport to have official sanction, but are taken under the guise of a notary's seal.

The uncontested evidence produced to the trial court in the City's summary judgment motion leads to only one unescapable conclusion – the officials of the City of Chehalis legitimately attempted to enforce City ordinances requiring a building permit and Appellants have repeatedly violated those codes. Indeed, the Appellants continue to violate the City's codes by building their addition without even seeking the most basic governmental approval – a building permit.

This case does not involve arbitrary government action to deny a building project, but instead involves the rejection of governmental authority by a private citizen. A recent case involving FOIA requests

for records of detainees held at Guantanamo Bay began with an apt caution:

Ours is a government of laws, laws duly promulgated and laws duly observed. No one is above the law not the executive, not the Congress, and not the judiciary. See e.g., *Youngstown Sheet and Tube, et al. v. Sawyer*, 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952).

ACLU v. Department of Defense, 339 F.Supp.2d 501, (S.D.N.Y. 2004).

Here, the trial court correctly rejected Appellants' efforts to set themselves up as above the law, rejecting their hallucinatory claims of conspiracy and racketeering. This result was indisputable as the Appellants failed to offer any declarations in contesting the City's motion. Summary judgment was properly granted dismissing this claim.

C. SUMMARY JUDGMENT WAS PROPERLY GRANTED ENJOINING ILLEGAL CONSTRUCTION BY APPELLANTS AND FURTHER VIOLATION OF THE BUILDING CODE.

One of the laws that Appellants are subject to is the building code statutes and ordinances duly passed by the State Legislature and City Council of the City of Chehalis. Appellants have flaunted those laws by refusing to apply for a building permit and continuing their illegal construction. In such cases, injunctive relief is appropriate.

Bass Partnership v. King County, 79 Wn. App. 276, 902 P.2d 668

(1995); *Snohomish County v. Rugg*, 115 Wn. App. 218, 61 P.3d 1184 (2002).

The City submitted declarations setting forth a prima facie showing that Hansen violated the Building Code by constructing a second story addition to her residence without first seeking a building permit. CP 76, 97. The City Hearing Examiner heard this evidence and entered a decision containing findings of fact and conclusions of law confirming the illegal construction activity. CP 122. Hansen ignored this decision and did not file any appeal to contest the Hearing Examiner's findings. CP 100. Moreover, when it was presented to the trial court in support of the City's summary judgment motion on its counterclaim seeking a mandatory injunction, no opposition or contravening declarations were filed. Judge Tabor correctly granted the City's motion and issued an injunction requiring compliance with the building code.

Here, the court's injunction recognized that the nuisance created by the unpermitted construction of a second story addition could be cured or abated by compliance with the City's order to apply for permits, obtain inspections and make necessary corrections to comply with the building code. The court's order requires this step before any further sanction could be sought, such as an order to remove the

illegal addition. There is ample support for the court's authority to order removal of the unpermitted addition, if the Appellants failed or refused to seek the required permits. *See Radach v. Gunderson*, 39 Wn. App. 392, 399-400, 695 P.2d 128 (1985) (Appellants entitled to an injunction requiring the neighbor's house be brought into compliance with zoning setback requirements).

The injunction issued by the trial court requires compliance with the applicable building codes, including filing applications for permits, obtaining inspections and paying applicable fees. As such, it is well within the Court's discretion to shape an equitable remedy. There was no abuse of discretion and the Court's order should be upheld.

D. PURSUANT TO RAP 18.9, THE COURT SHOULD AWARD SANCTIONS FOR FILING OF A FRIVOLOUS APPEAL, BROUGHT FOR THE PURPOSE OF DELAYING COMPLIANCE WITH THE TRIAL COURT'S ORDERS.

The appeal and opening brief filed by Appellants do not raise any rational argument as to why the trial court erred in issuing the injunction against their violation of applicable building codes. Instead, the Appellants resort to recitation of various pseudo-legal phrases that have no application to the case at hand.

In their argument, Appellants raise numerous factual allegations that are completely false, misleading and unsupported by the record.

For example, they falsely allege:

- that the court conducted a bench trial; (Brief at 29)
- that Judge Tabor treated them as incompetent and presumed to be a guardian ad litem; (Brief at 29)
- that the court disregarded the record; (passim)
- that the court was “wantonly deceitful;” (Brief at 14)
- that Judge Tabor granted the motions for summary judgment knowing that they were not supported by evidence or facts or grounds; (Brief at 24)
- Judge Tabor deprived Appellants of access to the court; (Brief at 13)

All of these statements are categorically false when the record before the Superior Court is considered.

Likewise, Appellants raise legally frivolous arguments, now claiming that the lower court lacked subject matter jurisdiction, essentially because it rejected Appellants’ arguments. *Id.* at 19, 29-30. Appellants’ claim is not only unsupported by any citation to authority, but contradicts their own Complaint, where Appellants themselves invoked the jurisdiction of the Thurston County Superior Court.

These types of deliberate falsehoods in the briefs merit sanctions under RAP 18.9. Indeed, when confronted with similar abusive and frivolous pleadings by similar constitutionalists and litigants,¹¹ Justice Talmadge has openly opined that sanctions are proper when groundless pleadings of this ilk are filed. In *State v. Campbell*, 143 Wn.2d 162, 19 P.3d 1012 (2001), in response to the attempted service of bills of particulars upon police officers in traffic citation cases, he wrote:

Even with this narrower definition, the State is not without tools to deter the misuse of the justice system by people like Sullivan. The documents here could readily have been quashed. Sanctions may, and indeed ought to, be imposed against persons like Sullivan for filing groundless documents. See CR 81 (civil rules for superior court supplement existing rules); CR 11; CRLJ 11. Indeed, numerous other statutory tools may be used. See, e.g., RCW 4.84.185 (sanctions for frivolous action) or RCW 4.24.350 (counterclaim for malicious prosecution).

Sullivan harassed the officers in this case to further his peculiar brand of politics. He should have been sanctioned for such misuse of the legal system

143 Wn.2d at 190 (J. Talmadge, concurring).

¹¹ Justice Talmadge described the intent of litigants like Hansen as being to cause trouble for our legal system. "Whether described as Freemen, Militia, Constitutionalists, Patriots or the like, these individuals hope to do all they can to disrupt our justice system in the hopes ifs collapse will presage a utopia." 143 Wn.2d at 188-189.

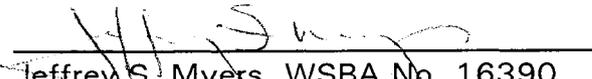
Here, the Appellants have brought this appeal without raising any issue that is remotely meritorious. They seek instead to prolong their ability to evade the edicts of the building code. As in *Campbell*, this action was brought to harass the government agencies and further Appellants' political agenda in hopes of circumventing one of the most universally accepted applications of the police power – the requirement to obtain a simple building permit. This misuse of the appellate process merits sanctions under RAP 18.9(a). The City requests an order awarding attorneys' fees incurred in responding to this appeal as appropriate sanctions.

V. CONCLUSION

The appeal of the order granting summary judgment to Respondent Campbell and enjoining violation of the building code is wholly without merit and is frivolous. The Court should affirm the order of the Superior Court and award sanctions against Appellants under RAP 18.9.

Dated this 24th day of April, 2006.

LAW, LYMAN, DANIEL,
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**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II**

DAVID CARROLL, STEPHENSON;
KENNETH WAYNE; and MONICA
HANSEN,

Appellants,

v.

PAUL TRAUSE; DAVID CAMPBELL;
CHARLES R. TENPAS; JOHN L.
KOSTICK; and JAMES H.
HUBENTHAL,

Respondents.

No. 33091-1-II

**DECLARATION OF MAILING AND
SERVICE**

PURSUANT TO RCW 9A.72.085, Linda L. Olsen, declares as follows:

On April 24, 2006, I caused to be filed and served via U.S. Mail postage prepaid, the original and/or copies of the Respondent Campbell's Reply Brief and this Declaration of Filing and Service by

sending the same to the Clerk of this Court and mailing to the parties as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 24th day of April, 2006, at Olympia, Washington.


Linda L. Oisen