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COURT OF APPEALS

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STATE OF WASHINGTON

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NO. 33091-1-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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DAVID CARROLL, STEPHENSON, PERCY NEWBY,  
and MONICA HANSEN,

Appellants,

v.

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

Respondents.

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**BRIEF OF RESPONDENT  
DEPARTMENT OF LABOR AND INDUSTRIES**

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## I. NATURE OF THE CASE

Monica Hansen (Ms. Hansen)<sup>1</sup> owns property in the City of Chehalis (the City). She started building a significant addition to the second story of her residence. Ms. Hansen refused to obtain the necessary building and electrical permits for this addition and even after the City ordered her to cease and desist, she continued construction.

The Department of Labor and Industries (Department) attempted to inspect the electrical installation in the new construction. When this was unsuccessful, the Department posted a non-compliance notice and correction report requiring Ms. Hansen to obtain and post an electrical permit. She did not comply.

The Department then notified Ms. Hansen that because she had not obtained the required electrical permit nor made necessary safety corrections, the property's electrical service would be disconnected. Rather than obtain the required electrical permits or make the necessary safety corrections, Ms. Hansen then filed a lawsuit in superior court against several parties including the Director of the Department of Labor

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<sup>1</sup> The appellants will be referred to collectively as "Ms. Hansen." Several appellants are listed in this matter; however, Ms. Hansen is the lead appellant.

of Industries, Paul Trause.<sup>2</sup> Ms. Hansen's theories, as explained below, were unsupported by citation to any relevant law, depend on imaginary legal processes that she made up, and are unsupportable at law. The Department and other parties moved for summary judgment. Ms. Hansen provided no evidence to dispute the summary judgment. The superior court then granted the summary judgment. This appeal followed.

## **II. STATEMENT OF ISSUES**

1. Whether summary judgment was properly granted to reject Ms. Hansen's claims against the Department of Labor and Industries arising from the disconnection of electrical service to Ms. Hansen's property.

2. Whether Ms. Hansen was properly ordered to comply with all corrections to code violations, including violations of the electrical code.

## **III. COUNTERSTATEMENT OF THE CASE<sup>3</sup>**

### **A. Statement of Facts**

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<sup>2</sup> "Department" references generally will include Department employees, as well as the individually named party, Paul Trause, who was the Director of the Department in 2004 but is no longer the Director. "City" will refer to the City of Chehalis and the respondent David Campbell. "PUD" will refer to the Lewis County Public Utility District and the three PUD commissioners named in the lawsuit.

<sup>3</sup> The Department agrees with the Counterstatement of the Case in Respondent Campbell's brief (brief of the City of Chehalis) to this Court. Resp. Campbell Br. at 1-9.

Ms. Hansen owns property located at 79 S.W. 11<sup>th</sup> Street in the City of Chehalis. CP 98. In August 2004, Ms. Hansen engaged in a major construction project at 79 S.W. 11<sup>th</sup> Street in order to build an addition to the second story of her residence. CP 97-98.

In August 2004, two building inspectors for the City of Chehalis (City) discovered that Ms. Hansen was constructing a second story addition without the necessary building permits. CP 76. The building inspectors informed her that building and electrical permits were necessary for the work that she was doing and requested that she make the required applications. *Id.*

Ms. Hansen refused to apply for a building permit and continued construction. CP 77. On August 10, 2004, the City served Ms. 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. Ms. Hansen did not comply with the directives of the City's Notice and continued construction. CP 89-91.

On August 20, 2004, the Department attempted to perform an inspection, requested by the City, of the electrical installation for the addition. CP 545. When this was unsuccessful, the Department posted a non-compliance "red tag" notice, which included an electrical inspection correction report. The notice required that Ms. Hansen obtain and post an

electrical work permit for the work being performed at the site address. CP 546. The Department followed up with letters dated August 24, 2004 and September 9, 2004, directing that Ms. Hansen obtain an electrical permit within five days and call for an inspection of the electrical installation, to ensure the installation met the minimum standard of safety. CP 548-550. Ms. Hansen did not obtain an electrical permit or call for an inspection in response to either request.

The City served Ms. Hansen with a notice of determination and order to abate a dangerous and substandard building dated September 10, 2004. CP 103. The order required Hansen to immediately cease all construction and apply for a building permit within 30 days. The order also informed Plaintiff of her rights to appeal. *Id.*

On September 22, 2004, Ms. Hansen submitted to the City and to the Department a document entitled "Notice of Fault and Opportunity to Cure" dated September 18, 2004. CP 109, 274. This document attempted to create and impose an administrative process (one that exists only in Ms. Hansen's imagination) on the City and the Department and the PUD. Despite procedural defects, the City treated it as an appeal and notified Ms. Hansen a hearing would be conducted before the City Hearing Examiner. CP 98. The City sent a notice on October 14, 2004, notifying

Ms. Hansen that the hearing would be held on November 18, 2004. CP 115.

On October 4, 2004, the Department notified Ms. Hansen that the unless she made necessary electrical safety corrections, the Department would direct the Lewis County PUD to de-energize the electrical meter at her residence pursuant to RCW 19.28.101(3). CP 120. RCW 19.28.101(3) authorizes the Department to order the discontinuance of electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with Chapter 19.28 RCW.

Despite the notices from the City and the Department, Ms. Hansen continued with construction. CP 93-96.

On October 15, 2004, Ms. Hansen submitted to the Department a document entitled "Administrative Judgment." CP 304. This document was similar to other documents submitted by Ms. Hansen that purported to create an administrative process. CP 304.

When Ms. Hansen continued to refuse to obtain the required electrical permit, the Department notified her on October 21, 2004, that it was asking the Lewis County PUD to immediately disconnect power to the electrical meter at 79 SW 11<sup>th</sup> Street. CP 596. The PUD disconnected power to the meter on October 27, 2004. CP 600.

The City's attorney notified Ms. Hanson on October 22, 2004 that her attempts to establish an alternative administrative process were illegitimate and that she would receive a hearing before the City Hearing Examiner. CP 73.

On November 16, 2004, Ms. Hansen and the two other plaintiffs filed suit in Thurston County Superior Court. She sought a declaratory judgment, injunctive relief, an order on "official bond(s), and alleged criminal profiteering (racketeering). This complaint, which, although not clear, appears to ask for the restoration of her electrical power and damages. CP 6. The suit was brought against Paul Trause, the former Director of the Department; Dave Campbell, the City Manager of the City; and three Lewis County PUD commissioners, Charles R. Tenpas, John L. Kostick, and James H. Hubenthal.

On November 18, 2004, a hearing was conducted before the City Hearing Examiner, John McKerricher. CP 99. Ms. Hansen appeared at the hearing but did not offer any evidence contravening the City's Notice and Order to Abate. CP 99. Instead of participating at the hearing, Ms. Hanson filed the lawsuit in superior court.

On January 24, 2005, the Hearing Examiner issued a decision affirming the City's order to abate. CP 122. Ms. Hansen did not appeal

this decision to Lewis County Superior Court. The 21-day appeal period under RCW 36.70C.040 expired on February 17, 2005.

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

**B. Procedural History**

On January 22, 2005, the City filed an answer and counterclaim requesting, *inter alia*, dismissal of all claims set forth in the complaint; a mandatory injunction requiring Ms. Hansen to cease and desist all construction at 79 SW 11<sup>th</sup> Street; a mandatory injunction requiring Ms. Hansen to apply for a building permit from the City and comply with all the requirements of inspections, plans, fees, etc.; and a mandatory injunction requiring Ms. Hansen to apply for an electrical permit from L&I and comply with all the requirements of the State electrical code. CP 38.

On March 7, 2005, the City filed a Motion for Summary Judgment seeking dismissal of all the Plaintiffs' claims against the City; this Motion was noted for April 8, 2005. CP 53. On March 9, 2005, Ms. Hansen filed a tort claim with Risk Management of the Office of Financial Management against the Department and other respondents, asking for damages in the amount of \$1,283,192.00 for, *inter alia*, the disconnection

of her electricity. CP 134. Then on March 22, 2005, Ms. Hansen moved to stay the summary judgment motion scheduled for April 8, 2005. She indicated that she had a pending claim against the state being reviewed by Office of Financial Management's (OFM) Risk Management section and she wanted OFM's response before the motion for summary judgment was heard. CP 126. The motion to stay was noted for the motion docket for April 1, 2005, by Ms. Hansen. RP 4/1/05. In the interim, Risk Management denied Hansen's claim on March 23, 2005. CP 140.

Both the Department and the City opposed the motion for a stay. CP 130,141, RP 4/1/05. Ms. Hansen requested that the superior court "hear the motion without oral argument" and without requiring the parties to personally appear but gave no reason for this request. CP 127. She also requested, in the alternative, that the court issue an order notifying the parties of the time and place for the motion to be argued. *Id.* Although she had been the one to note the motion for April 1, 2005, Ms. Hansen did not appear to argue her motion for a stay and the superior court denied the stay motion on April 1, 2005. CP 131, 141, 478.<sup>4</sup>

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<sup>4</sup>. On April 7, 2005, Ms. Hansen filed a "Notice of (interlocutory) appeal to Court of Appeals, Div. II, of Order Dated April 1, 2005, Denying Plaintiff's Motion for Stay of Proceedings" accompanied by a "Tender of Supersedeas Bond [of \$1,000] for Stay of Proceedings Pursuant to RAP 8.1." CP 480, 483. However, this was not accepted by the Court of Appeals. The current appeal is from the order granting summary judgment, and the order denying stay is before the Court as part of that appeal.

On April 8, 2005, the City argued its summary judgment motion. Ms. Hansen appeared and provided oral argument. Following conclusion of the motion hearing, the superior court granted the City's motion. CP 490.

In May 2005, the Department and Lewis County PUD filed their motions for summary judgment on all claims raised by Ms. Hansen and the other plaintiffs. CP 504, 592. The Department additionally requested that Ms. Hansen be ordered to comply with the Department's lawful requirement to obtain electrical permits and to otherwise comply with chapter 19.28 RCW, the electrical code, regarding the construction of the addition in question. CP 519.

These motions were argued on July 15, 2005 and granted. CP 673; RP 7/15/05 at 27. Ms. Hansen was required to comply with any and all corrections relating to code violations pursuant to the mandatory injunction granted to the City. CP at 673. In addition, the court ordered that PUD not reconnect the electricity to the property at 79 SW 11th Street in Chehalis until Ms. Hansen complied with the proper permits. *Id.* There is no evidence that she has ever done so.

Ms. Hansen filed motions for summary judgment on June 21, 2005 and June 27, 2005, noting them for argument on July 15, 2005. CP 622, 636. The Department and the PUD objected to these motions as

not being timely filed. CP 662, 665. The Court declined to consider these motions. RP 7/15/05 at 3, 29.

Ms. Hansen appealed to this Court from the superior court orders of April 15, 2005, and September 1, 2005. CP 490, 673.

#### IV. STANDARD OF REVIEW<sup>5</sup>

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. *Intl Broh. 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 a trial court decision, an 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 201 (2004).

A summary judgment may be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Weyerhaeuser Co. v. Aetna*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994).

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<sup>5</sup> The Department agrees in all respects with the Standard of Review analysis of the City of Chehalis. Resp. Campbell Br. at 9-11.

Summary judgment is proper if reasonable minds could reach but one conclusion from the evidence presented. *Graves v. Department of Game*, 76 Wn. App. 705, 887 P.2d 424 (1994); *Hiatt v. Walker Chevrolet*, 120 Wn.2d 57, 837 P.2d 618 (1992).

The moving party bears an initial burden of demonstrating that there is no genuine issue of material facts. *Ames v. Fircrest*, 71 Wn. App. 284, 857 P.2d 1083 (1993). Once a party seeking summary judgment has made an initial showing that no genuine issues of material fact exist, the non-moving party must set forth specific facts which, if proved, would establish their right to prevail on the merits. CR 56(e). Speculation, argumentative assertions that unresolved factual issues remain, and conclusory affidavits are insufficient, by themselves, to avoid a summary judgment. *Seven Gables v. MGM/UA Entertainment*, 106 Wn.2d 1, 721 P.2d 1 (1986).

## V. ARGUMENT<sup>6</sup>

### A. Ms. Hansen Failed To Present Any Evidence Disputing the Department's Summary Judgment Motion

In considering whether summary judgment was properly granted, this Court must evaluate whether there was a dispute of material fact. Under CR 56, when confronted with a motion for summary judgment

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<sup>6</sup> The Department agrees in all respects with the merits arguments of the City of Chehalis. Resp. Campbell Br. at 11-24.

supported by proper declarations, the adverse party may not rest upon mere allegations or denials of his pleading. CR 56(e). The response must set forth specific facts showing there is a genuine issue for trial. *Id.* If a party that fails to do so, CR 56(e) requires that summary judgment be entered against that party.

Ms. Hansen was obligated to offer affidavits that showed a dispute of material fact. This she failed to do. Instead, she claims she has controverted the Department's motion in "pleadings and oral argument evidencing ongoing controversy." AB 2.<sup>7</sup> Where, as in this case, the nonmoving party fails to controvert relevant facts supporting a summary judgment motion, those facts are considered to have been established. *Central Wash. Bank v. Mendelson-Zeller, Inc.*, 113 Wn.2d 346, 354, 779 P.2d 697 (1989); *Wash. Osteopathic Med. Ass'n v. King Cy. Med. Servo Corp.*, 78 Wn.2d 577, 579, 478 P.2d 228 (1970).

Ms. Hansen did not cite any evidence that raised a dispute of fact at the time when the superior court granted the Department's motion for summary judgment. Instead, as noted above, she relied on the pleadings and on oral argument. AB 2. This is inconsistent with CR 56. The law is clear that a party cannot rest upon their pleadings to create a factual dispute, and that a party's statements made during oral argument are not

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<sup>7</sup> "AB" refers to the Appellant(s)' Opening Brief, second amended version.

adequate to create a dispute of material fact. *Young v. Key Pharm., 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).

Ms. Hansen's argument that summary judgment was inappropriate due to a dispute of facts is, therefore, wholly without merit.

Ms. Hansen's allegations at AB 2 that the declarations submitted by the Department misled the court are unsupported by any evidence and thus do not create a factual issue about their credibility. To raise an issue of credibility, the non-moving party must submit contradicting evidence or otherwise impeach the moving party's evidence. *Cowiche Basin Partnership v. Mayer*, 40 Wn. App. 223, 698 P.2d 567 (1985). Here, no contradicting evidence or evidence impeaching the Department's declarants was submitted by Ms. Hansen. Instead, Ms. Hansen merely makes the bare allegation that the affidavits were of incompetent witnesses without first hand knowledge of the facts. CP 623, 626, 638, 647; AB 8, 20, 26, 28. No fact dispute existed and summary judgment was properly granted.

**B. Ms. Hansen's Arguments Lack Any Merit.**

**1. The Department acted within its legal authority to enforce the electrical law and regulations.**

Ms. Hansen alleges that the Department provided no factual evidence of its lawful authority to apply Washington State Department of Labor and Industries regulations to private property, without proper notice. AB 11.

This argument is wholly without merit. The Department has the authority to apply the electrical law and rules that have been duly enacted by the Legislature and that uniformly apply to all citizens. Furthermore, Ms. Hansen was given notice on more than one occasion that the electricity to her property would be disconnected if she did not make the necessary corrections. CP 120, 288, 549.

She further argues that the disconnection of the electricity to her property amounted to denying service of electricity to a contractual account in good standing. AB 12. Although she is far from clear, Ms. Hansen appears to be referring to her account with the PUD to provide electrical service to her property. *Id.*

The Department did not, however, interfere with any contract; rather, the Department exercised the authority granted in

RCW 19.28.101(3)<sup>8</sup> to order the discontinuance of electrical service to electrical conductors or equipment found to be dangerous to life or property. There was such a finding in this case (CP 104-105, 120, 294) and therefore the Department's action was justified.

**2. Ms. Hansen had the opportunity to present evidence in response to the summary judgment motions of the Department and the City of Chehalis.**

Ms. Hansen argues that the superior court erred by granting summary judgment, asserting that she did not have the "opportunity to present a case." AB 15.

This is simply not the case. Ms. Hansen had ample opportunity to present evidence setting forth specific facts showing a genuine issue for trial in response to the respondents' summary judgment motions, which were filed in March and May 2005. CP 53, 504, 592.

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<sup>8</sup> RCW 19.28.101(3) reads: "Whenever the installation of any wiring, device, appliance, or equipment is not in accordance with this chapter, or is in such a condition as to be dangerous to life or property, the person, firm, partnership, corporation, or other entity owning, using, or operating it shall be notified by the department and shall within fifteen days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger to life or property and to make it conform to this chapter. The director, through the inspector, is hereby empowered to disconnect or order the discontinuance of electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with this chapter. Upon making a disconnection the inspector shall attach a notice stating that the conductors have been found dangerous to life or property and are not in accordance with this chapter. It is unlawful for any person to reconnect such defective conductors or equipment without the approval of the department, and until the conductors and equipment have been placed in a safe and secure condition, and in a condition that complies with this chapter. "

Ms. Hansen did not respond to the motions of the City and the Department. CP 491. Instead, she filed a motion in opposition to the Department's and the PUD's summary judgment motions on May 27, 2005, but did not note it for hearing. CP 617. She also filed non-timely motions for summary judgment and in opposition to the respondents' motions. CP 622, 636. Each of these motions restated earlier arguments and failed to include any specific facts showing that there was a genuine issue for trial. The declarations she submitted with her motions likewise failed to show any dispute of material fact. CP 611, 614, 630, 633, 652, 655.

**3. Ms. Hansen cannot rely on documents she created for her imaginary administrative process that has no basis in law.**

Ms. Hansen argues that the superior court erred by not using the documents from her "administrative remedy process." AB 3, 7, 10, 15, 26. Her "administrative remedy process" is an imaginary process that she made up and for which there is no authority at law. She also relies on ER 201 (d), judicial notice of documents from her imaginary "administrative remedy process." AB 15. But there is no authority for a court to take judicial notice of an imaginary administrative process for which there is no authority at law.

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

As noted above, Ms. Hansen relied below on what she labels "administrative remedy . . . processes" - - her self-created imaginary legal processes that have no basis in law - - and she asserts that the "Defendant(s) have admitted to by default and by failure to object." AB 2. At various times, Ms. Hansen has 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 her own invention and lacked any force of law.

Instead of participating in a nonlegal, imaginary proceeding that lacks the sanction of law, the Department provided Ms. Hansen ample time and an opportunity to comply with the requirement to purchase an electrical permit and to correct the electrical safety violations at Ms. Hansen's property. The Department provided formal notice and cited the legal authority for such requirements. CP 120, 288, 596. Ms. Hanson failed to comply and instead sent the Department various nonlegal "administrative process" papers and judgments of her invention.

With her brief to this Court, Ms. Hansen again submits forms purporting to be “Administrative Judgments” against Respondents. AB (Ex. A, p. 7-20). These “administrative judgments” are facially nonlegal documents created by Ms. Hansen and placed under JoAnn Phillips’ notary’s seal, which does nothing to make legal what are patently nonlegal documents. *See* CP 250, 287, 309, 357.

These documents have no bearing on the correctness of the trial court’s summary judgment order in favor of the Department and the City. Indeed, these meaningless documents were not timely submitted to the trial court, which, nevertheless, considered them, and still granted the motions for summary judgment. RP 4/08/05 pp. 19-20; RP 7/15/06 p. 31.

**4. The superior court acted within its discretion to deny a non-oral argument proceeding for a motion to stay.**

Ms. Hansen argues that the superior court erred by not allowing her to have a non-oral argument proceeding for her motion to stay. AB 16. She claims further that as a pro se litigant she was entitled to special consideration. AB 16. She also relies on CR 12(e). AB 17. None of these arguments support her claims.

The motion to stay was noted on the regular Friday motion calendar by Ms. Hansen. RP 4/1/05. The superior court acted within its discretion in requiring the moving party’s presence at this argument.

Judge Tabor noted that it is not his practice to rule without oral argument, so he allowed the defendants who appeared to give oral argument. RP 4/8/05. *See State v. Bandura*, 85 Wn. App. 87, 93, 931 P.2d 174 (1997) (Oral argument is a matter of discretion as long as the moving party has the opportunity to argue his or her version of the facts and law in writing.). Ms Hansen had the opportunity to argue her version of the facts and law in writing. CP 126. Thus Judge Tabor had the discretion to require oral argument before ruling.

Moreover, pro se litigants are held to the same standard as attorneys. *In re the Marriage of John Werley*, 34 Wn. App. 344, 349, 661 P.2d 155 (1983). Therefore Ms. Hansen is not entitled to special consideration.

Ms. Hansen claims that pursuant to what she labels, without citation to any relevant authority, the “common law authority of the United States Supreme Court,” a judicial officer has an obligation to point out defects (in the pleadings) and afford direction for corrections to pro se litigants. She cites only Washington state case law as authority for this proposition (AB 17), and the cited cases do not support her claim. She notes that she was not requested to provide a definite statement or direction to provide such statement, and she claims that Judge Tabor somehow contravened the purported “common law authority of the United

States Supreme Court” by failing to provide instruction on which of her defective pleadings were to be corrected. AB 18.

However, there is no authority for her argument. Not only is there no case law in support of her theory, but also, CR 12(e), on which she relies, does not ever require that a party file a motion asking for a more definite pleading. CR 12(e) merely provides a process by which a party, if the party so chooses, may point out the defects in a pleading that is vague or ambiguous. None of the parties in this case filed such a motion, and therefore CR 12(e) is irrelevant here. Ms. Hansen cites no authority requiring the superior court, sua sponte, to correct the pleadings of any party or pro se litigant.

**5. The superior court had jurisdiction to hear this case.**

Ms. Hansen claims that the superior court acted with “extreme prejudice” to her due process rights, and that this alleged action of the superior court deprived that court of subject matter jurisdiction. AB 18. She cites an 1828 United States Supreme Court decision that stands for the unremarkable and well-established proposition if a court is without jurisdiction to issue a ruling, its judgments and orders are nullities. AB 19.

Ms. Hansen’s argument challenging subject matter jurisdiction fails. Ms. Hansen offers no support for her claim that the court acted with

extreme prejudice to violate her due process rights. Instead, she cites cases that state a court must set forth findings of fact and conclusions of law in certain circumstances, and that such findings of fact must be based on valid evidence.

Thurston County Superior Court had original jurisdiction to hear this case pursuant to RCW 2.08.010. Ms. Hansen's disagreement with the court's procedures and decision in granting summary judgment to the Department and the City does not mean the superior court violated the appellants' due process rights nor does it mean the court was deprived of subject matter jurisdiction. Furthermore, the superior court set forth findings of fact and conclusions of law based on evidence presented by the Department and the City. CP 490, 673.

Ms. Hansen also argues that the attorneys for the Department and the City failed to submit pleadings and evidence sufficient to invoke the subject matter jurisdiction of Thurston County Superior Court. AB 13. This is simply wrong. The Department and the City filed proper and timely summary judgment motions supported by declarations of competent witnesses.

**6. Ms. Hansen's claim that summary judgment was granted to the Department and the City based on affidavits of incompetent witnesses, including affidavits of counsel, is without merit.**

Ms. Hansen repeatedly asserts that affidavits of incompetent witnesses without personal knowledge of relevant facts were submitted by the City and the Department. *See, e.g.*, AB 2, 8, 20. Ms. Hansen offers no evidence that the witnesses who submitted declarations were incompetent or did not have personal knowledge of the facts to which they attested. She merely makes this bare allegation.

Ms. Hansen also claims, without citation to authority, that counsel to a party is not competent to testify at trial; therefore affidavits of counsel are inadmissible, and as such, Judge Tabor, according to what Ms. Hansen labels the “common law of the United States Supreme Court” (with no supporting citation), could not consider either the pleadings or the oral argument of counsel for the Department or the City in support of their motions. AB 20.

While there are tactical reasons why an attorney might choose not to submit an affidavit in support of a motion for summary judgment, there is no prohibition under CR 56 or under the case law on counsel submitting an affidavit in support of summary judgment where the affidavit is based on personal knowledge. *See, e.g., Caldwell v. Yellow Cab Service, Inc.*, 2 Wn. App. 588, 591, 469 P.2d 218 (1970); *see generally* 11, James William Moore, *Moore’s Federal Practice*, § 56.14, at 56-161-62 (3d ed. 2005) (“Counsel may submit an affidavit in connection with a summary

judgment motion so long as there is compliance with the general requirements applicable to all such affidavits.”

The only personal declaration submitted by counsel for the Department was one in opposition to Ms. Hansen’s motion to stay. CP 130. Counsel for the City did submit personal declarations both in opposition to the motion to stay and in support of its motion for summary judgment. CP 66, 149. However, the City counsel’s declaration in support of summary judgment merely recited procedural facts and other facts within the counsel’s personal knowledge. CP 6, 46, 48, 70, 73. These facts were also supported by other evidence in the record. As already noted, Ms. Hansen does not point to anything in the declarations or elsewhere in the record suggesting that the declarations were not based on personal knowledge. Thus such declarations are not improper and are admissible.

Ms. Hansen also objects: 1) that Judge Tabor considered discussion of the facts in the pleadings and oral argument of counsel for the City and the Department; and 2) that this discussion was unsupported by an affidavit of a competent fact witness. First, as noted above, the proper declarations of fact witnesses with personal knowledge were placed in the record, and Ms. Hansen offers no proof that these witnesses are incompetent or without personal knowledge of the facts.

Second, she cites no authority for her bald assertion that Judge Tabor could not consider discussion of the facts in pleadings and oral argument of counsel. Ms. Hansen may be confusing argument with other elements of the legal process. For instance, during the Department's argument of its motion, she objected that the attorney for the Department had not been sworn in for testimony. RP 7/15/05 p. 7. When the superior court responded that the objection was not well taken, Ms. Hansen replied that she wanted it on the record that the attorney was not sworn in. *Id.* The superior court responded correctly that this was oral argument. *Id.*

**C. Summary Judgment was Properly Granted on Claims Against the Department.**

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, Ms. Hansen has not presented any coherent argument why the trial court erred in granting summary judgment as a matter of law.

**1. Ms. Hansen's claim that the Department actions denied due process is without merit.**

One of Ms. Hansen's claims against the Department appears to be that the Department initiated enforcement action against Ms. Hansen

without providing due process. CP at 23-25. Ms. Hansen's due process claim is without merit.

Ms. 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. CP 77, 87. The notice of nuisance also required her to stop all construction activity. CP 87. When she did not do so, the City 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. CP 104. Ms. Hansen was explicitly informed of her right to appeal under the Uniform Code for Abatement of Dangerous Buildings.

She was also notified on more than one occasion of the Department's intention to order disconnection of her electrical service unless an electrical permit was purchased and the necessary safety corrections were made. CP 120, 288, 294. She was given ample opportunity to make the necessary corrections which would have prevented the discontinuance of her electrical service.

The City 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. Once the property at 79 SW 11<sup>th</sup> Street was properly adjudicated to be a substandard building and a dangerous building, in part due to the installation of electrical wiring in violation of the National Electric Code (NEC), the Department acted under RCW 19.28.101 by ordering a disconnect of the power.

Here Ms. Hansen walked out of the administrative hearing that would have provided the due process that she now sues the City and the Department for failing to provide. And she ignores the notices given to her by the Department before her electrical service was disconnected. Under any rational standard, her due process claims, like her other claims, are without merit.

**2. The Department did not take Ms. Hansen's property for public use without prior just compensation, nor did it interfere with the obligation of contract.**

Ms. Hansen claims that the discontinuance of electrical service to her property resulted in a conversion of her property for public use without prior just compensation, and she also asserts that this was an unlawful interference with the obligation of contract. AB 6. Ms. Hansen does not explain just what contract she is referring to, but it is likely the contract with the PUD to provide electricity to her property.

There is not a scintilla of evidence to support these accusations. The Department, in ordering the electrical service disconnect, was attempting to enforce the electrical code and rules that uniformly apply to all citizens. Instead of complying with these laws, Ms. Hansen set herself up as above the law and invoked the Ninth Amendment as a basis to establish her self-created “administrative process.” CP 8, 12, 352. Ms. Hansen has demonstrated her frequent abuse of the legal process by creating her own imaginary legal process and recording, as noted above, facially invalid “administrative judgments” that she has created herself and persuaded a notary public to sign. In so doing, she has demonstrated a contempt for lawful authority leading to her refusal to participate in the procedure adopted by her duly elected representatives. Ms. Hansen is not elected to any office, but has in essence tried to appoint herself as an imaginary administrative judge, answerable to no one.

The record in this case leads to only one inescapable conclusion – the City of Chehalis acted properly, as did the officials of the Department of Labor and Industries in attempting to enforce a Washington statute requiring an electrical permit and inspections of the electrical wiring. Ms. Hansen has repeatedly violated that code. Indeed, Ms. Hansen presumably is continuing to violate the State’s codes by building an addition without even seeking the most basic governmental approval – an electrical permit.

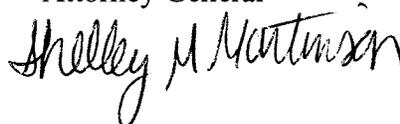
This case does not involve arbitrary government action to deny a building project, but instead involves the unsupportable, defiant flouting of governmental authority by a private citizen.

## VI. CONCLUSION

For the foregoing reasons, the superior court’s orders granting summary judgment to the Department and to the City should be affirmed.

DATED this 24<sup>th</sup> day of May, 2006.

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NO. 33091-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

BY \_\_\_\_\_  
DAVID CARROLL, STEPHENSON, PERCY  
NEWBY and MONICA HANSEN,

Appellants,

v.

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

Respondents.

DECLARATION  
OF MAILING

DATED at Tumwater, Washington:

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the 24th day of May, 2006, I mailed the Brief of Respondent Department of Labor and Industries to all parties by depositing a postage prepaid envelope in the U.S. mail addressed as follows:

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