

No. 35497-7-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

FREDERICK E. COOPERRIDER,

Appellant/Plaintiff,

vs.

CITY OF OCEAN SHORES, a Municipal Corporation,

Respondent/Defendant

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DIVISION II
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STATE OF WASHINGTON
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APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Replying to Respondent the City of Ocean Shores's Response Brief is an exercise akin to engaging in a shouting match with a deaf person. The City's Brief ignores case law cited by Appellant Frederick Cooperrider, ignores Mr. Cooperrider's arguments, and attempts to misrepresent Mr. Cooperrider's case by responding to a straw man that it constructed and erected itself. This Reply Brief is intended to reply to the City's arguments and to correct the City's utter disregard of Mr. Cooperrider's actual Brief.

II. STATEMENT OF FACTS

In the City's Statement of Facts, it characterizes a phrase in Mr. Cooperrider's Amended Complaint – that the City actually activated the water connection – as being a “central and pivotal contention” of Mr. Cooperrider's case. Respondent's Brief at 1. While the Statement of Facts Section of a brief is ordinarily no place for argument, it is important to see the City's reliance on this contention in Mr. Cooperrider's complaint as being its first step in constructing a straw man for its

response, rather than responding to Mr. Cooperrider's actual brief. Furthermore, in focusing on Mr. Cooperrider's amended complaint, the City ignores the fact that Washington's notice pleading rule does not require parties to state all of the facts supporting their claims in their initial complaints. Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 222, 829 P.2d 1099 (1992). "Under the liberal rules of procedure, pleadings are primarily intended to give notice to the court and the opponent of the general nature of the claim asserted." Lewis v. Bell, 45 Wn. App. 192, 197, 724 P.2d 425 (1986). The notice pleading rule contemplates that discovery will provide parties with the opportunity to learn more detailed information about the nature of a complaint. Bryant, 119 Wn.2d at 222.

Here, not only in Mr. Cooperrider's Opening Appellant Brief but also in his Motion for Summary Judgment, Reply in Support of Summary Judgment, and his Response to the City's Motion for Summary Judgment he made it abundantly clear that his central contention is not that the City turned on the water and flooded his house. Instead, he argues that the City's failure to remove the water meter allowed water to be present in his pipes when it should not have been, *and* that the City either negligently turned on the water or negligently allowed a third person to do so.

Consequently, when the cold snap hit in January, there was water present in Mr. Cooperrider's pipes that should not have been there – water that froze and burst the pipes, causing flooding when the water melted.

The City's next error in its Statement of Facts is when it attempts to misrepresent the City Code as requiring specific language from a customer who wants removal of his water meter; the City states that it gave Mr. Cooperrider a meter removal request form "containing the language required by City Code" and that Mr. Cooperrider did not subsequently fill out and "provide the required request form." Respondent's Brief at 4. A quick glance at OSMC 13.06.230, however, appended by the City to its Brief, shows that the City Code requires no specific language for a meter removal request, nor does it require a special request form. "Customer may request removal of the water meter to a connected lot by notifying the city in writing of that request at least five working days in advance of the desired removal date." OSMC 13.06.230. The City also attempts to misrepresent the City Code as requiring payment, variously, of both the meter removal fee and any outstanding charges before a meter can be removed. Once again, OSMC 13.06.230 requires no such prepayment. "The city shall read the meter for a final bill

on the date of removal. All moneys owing the city for services as of the date of removal shall be due and payable upon presentation of the final billing.” *Id.* Therefore, the City’s Statement of Facts, in which it attempts to shade its failure to remove Mr. Cooperrider’s water meter under the color of law, is incorrect.

Finally, the City’s Statement of Facts alleges that the billing record obtained by Mr. Cooperrider in July of 2005 does not support Mr. Cooperrider’s claim that the City, instead of removing Mr. Cooperrider’s water meter in August of 2002, actually reconnected Mr. Cooperrider’s water. Respondent’s Brief at 7. As argued earlier, however, Mr. Cooperrider’s case does not rest on the issue of whether the City reconnected his water. Furthermore, the billing records do support Mr. Cooperrider’s claim, while the City has failed to produce any evidence countering it. The records show that a portion of the check Mr. Cooperrider submitted to pay his outstanding water charges and to request a meter removal was applied in the amount of \$53.50 under the “Other” category. This is the same amount described in OSMC 13.12.100(f) for restoration of service after discontinuation for failure to pay water charges. The City maintains this fee was actually a disconnection fee. *See*

Respondent's Brief at 11, *citing* the Declaration of the City Finance Director, at CP 26. However, there is no provision for a disconnection fee in the City Code, nor was Mr. Cooperrider's water service disconnected in August 2002; it was disconnected several months earlier. Therefore, the City's Statement of Facts, in which it attempts to argue that the City could not possibly have reconnected Mr. Cooperrider's water instead of removing his meter and that the facts support its argument, is incorrect.

III. ARGUMENT

A. **Mr. Cooperrider Has Sufficient Evidence to Support His Claim of Negligence by the City**

In the City's first argument section, it fails to respond to Mr. Cooperrider's Opening Appellate Brief. Instead, it appears fixated on one sentence in Mr. Cooperrider's amended complaint. Once again, the City argues that Mr. Cooperrider's sole contention is that "the City acted negligently by restoring water service to his house without notice sometime after August 28, 2002." Respondent's Brief at 11. As stated above, not only in Mr. Cooperrider's Opening Appellate Brief, but also in his Motion for Summary Judgment, his Reply in Support of his Motion for Summary Judgment, and in his Response to the City's Motion for

Summary Judgment, he alleged that the City first breached its duty by failing to remove the water meter at Mr. Cooperrider's request. This is a breach that allowed water to be in his pipes – when it should not have been – after one of two events occurred: after either the City itself negligently turned the water back on, or after the City negligently allowed an unknown third person to turn on the water.

The City further attempts to respond to the straw man it constructed by arguing: “The City does not need to prove who turned the water on. The Appellant bears the burden of proving that the City did so or at least having sufficient evidence to create a material issue of fact.” *Id.* On the contrary, there is no such burden. Regardless of whether the City's own employees mistakenly turned on Mr. Cooperrider's water or, as the City argues, that an unknown third person did so, the City is equally negligent: in the first instance for turning on water that should be off, and in the second for not adequately protecting the City's own turn-on valve in Mr. Cooperrider's valve box. In pressing this point, the City returns again to Mr. Cooperrider's amended complaint. As argued above, Washington is a notice pleading state. Mr. Cooperrider has long since expanded and elaborated on the allegations in his complaint, allegations which, it must

be noted, gave the City sufficient notice of the general nature of Mr. Cooperrider's claims.

The City also argues that it is impossible for it to have turned Mr. Cooperrider's water back on, despite the fact that it billed Mr. Cooperrider for the restoration of service. It builds its case on the facts that the City Code "forbids restoration of service after termination unless the account is fully paid," and that Mr. Cooperrider "never brought his account current." Respondent's Brief at 12. "Therefore," says the City, "the undisputed evidence confirms that the City did not turn the water on." *Id.* In addition to the fact that Mr. Cooperrider's case does not rest on whether or not the City turned the water on (compounding its original breach of failing to remove the water meter, the City would be equally negligent for allowing a third person to turn on the water as for turning on the water itself), the City's logic is faulty. Proof may not be made by inference piled on inference. Boyle v. King County, 46 Wn.2d 428, 432, 282 P.2d 261 (1955). It is certainly possible that a City worker mistakenly turned on Mr. Cooperrider's water, perhaps in the course of servicing all the houses in Mr. Cooperrider's neighborhood or perhaps in some other circumstances. The City's "proof" fails.

Furthermore, the City argues that an unknown third person must have turned on the water and seems to think that this unsupported allegation is the end of the matter. On the contrary, as cited in Mr. Cooperrider's opening appellate brief, Washington courts have held that "[w]hether an act may be considered a superseding cause sufficient to relieve a defendant of liability depends on whether the intervening act can reasonably be foreseen by the defendant; only intervening acts which are *not* reasonably foreseeable are deemed superseding causes." Cramer v. Dep't of Highways, 73 Wn. App. 516, 521, 870 P.2d 999 (1994); Anderson v. Dreis & Krump Mfg. Corp., 48 Wn. App. 432, 442, 739 P.2d 1177 (1987).

Here, the City has shown that both valves for Mr. Cooperrider's house are located in a utility box that is accessible to the public. Marche Declaration, CP 25. The City has a code provision penalizing a customer for unauthorized water turn-on. OSMC 13.12.100(e). The City actually assessed such a charge against Mr. Cooperrider for an unauthorized water turn-on by an unknown third person. Therefore, the City could reasonably foresee that an unknown third person might turn on Mr. Cooperrider's water again. Therefore, the actions of an unknown third person are not a

superceding cause. The City is still liable for its negligence in failing to remove Mr. Cooperrider's water meter. Where the defendant's negligence was superceded by the action of the plaintiff or a third party as a matter of law, a trial court may grant summary judgment for the defendant. Where the court cannot make such a conclusion the issue is properly submitted to the jury. Cramer, 73 Wn. App. at 521; Smith v Acme Paving Co., 16 Wn. App. 389, 396-97, 558 P.2d 811 (1976). Therefore, the City has failed to show that summary judgment was properly granted.

The City also argues that Mr. Cooperrider's request for the City to remove his water meter was insufficient because it failed to comply with Code requirements. As shown above, the Code only requires that the request be made in writing. It requires no specific language, nor does it require the use of a specific form (the City does provide a form in order to facilitate customer compliance with the "in writing" requirement, but such form is not actually required by Code). The City argues that its failure to remove the water meter is excused by the fact that Mr. Cooperrider requested that "'water service' be 'disconnected immediately,' language that normally refers to turning off the water valve to end the supply of water." Respondent's Brief at 13. This contention might have some

weight had not Mr. Cooperrider specifically referred to the Code provision in his letter that quotes the fee for removal of water meters (OSMC 13.12.100(m)) and had he not specifically referred to the sum of \$41.50 in his letter, the amount of the fee for the removal of water meters. The City therefore had sufficient notice that Mr. Cooperrider was requesting – in a manner that complied with Code – the removal of his water meter.

In fact, the City understood from Mr. Cooperrider's letter that he was requesting removal of his water meter, an understanding that is reflected in the letter sent to Mr. Cooperrider. CP 83-84. The City, in its Response Brief, states that it "notified Mr. Cooperrider that his payment was insufficient to cover the past due amounts as needed for additional service to be provided. OSMC 13.06.490." Respondent's Brief at 13. In so stating, the City makes two errors. First, as argued above, payment of past due amounts is not required for removal of a water meter. Second, the City makes the same error in its Brief that it did when dealing with Mr. Cooperrider. The Code provision cited, OSMC 13.06.490, covers resumption of water flow, not meter removal. The City therefore failed to follow its own Code requirements when it failed to remove the water meter and very well may have actually restored Mr. Cooperrider's service.

B. The Doctrine of *Res Ipsa Loquitur* Applies Under the Facts at Issue Here

In reading this next section of the City's argument, Mr.

Cooperrider wonders whether the City read his Appellate Brief at all, or whether the City merely cut and pasted its arguments that it used in responding to Mr. Cooperrider's summary judgment motion, since the City completely ignores all the case law that Mr. Cooperrider cited.

Alternatively, it may be the City's unstated and unsupported contention that case law cited in an appellate brief is not properly before the Appellate Court if that case law was not cited before the trial court. If the second possibility is the case, Mr. Cooperrider begs to differ:

“A party has the obligation to assert its claims, legal positions, and arguments to the trial court to preserve the alleged error on appeal.” Here, the [party] did [assert its claims] at the trial court level. There is no rule preventing an appellate court from considering case law not presented at the trial court level.

Walla Walla County Fire Protection Dist. No. 5 v. Washington Auto Carriage, Inc., 50 Wn. App. 355, 358 n.1, 745 P.2d 1332 (1987), *citing* Ashcraft v. Wallingford, 17 Wn. App. 853, 860, 565 P.2d 1224 (1977), *review denied*, 91 Wn.2d 1016 (1979). Here, Mr. Cooperrider argued *res ipsa loquitur* before the trial court. Therefore, all case law on the issue of *res ipsa loquitur* that he cites in any of his Appellate Briefs may be

properly considered by the Appellate Court.

1. **Mr. Cooperrider Showed that the Injury Ordinarily Does not Occur in the Absence of Negligence**

The first requirement for an inference of *res ipsa loquitur* is that the injury must be the kind that ordinarily does not occur in the absence of negligence. The case law that the City cites on this issue, Tinder v. Nordstrom, Inc., 84 Wn. App. 787, 793, 929 P.2d 1209 (1997), is similar in all essentials to the case law that Mr. Cooperrider cites. One way to establish that the injury is of that kind – not ordinarily occurring in the absence of negligence – is to show that “general experience teaches that the result would not be expected without negligence.” *Id.*, cited by Respondent at 17.

In his Appellate Brief, Mr. Cooperrider showed precisely that. The general experience and observation of mankind teaches that when water service to a home is turned off by the provider, and the homeowner makes no effort to resume the water service (and in fact made efforts to assure that water service was terminated permanently by attempting to have the meter removed), and yet water service is turned back on and the kitchen is flooded, that this result would not be expected without negligence on the part of the provider.

Instead of responding to Mr. Cooperrider’s argument, however, the City minimizes the scope of the injury to Mr. Cooperrider by focusing only on the burst water pipes in the kitchen. The City argues that “such events happen commonly despite due care when winter cold freezes pipes.” Respondent’s Brief at 17. The City completely ignores Mr. Cooperrider’s contention that water should not have been in his pipes in the first place, and that the presence of the water in his pipes can only be explained by the negligence of the City, first in failing to remove the water meter and second in either negligently turning on the water or negligently allowing a third person to do so.

2. **Mr. Cooperrider Showed that the City Had Exclusive Control Over the Instrumentality Causing the Flooding**

Here, the City’s Brief once again ignores case law cited by Mr. Cooperrider in his appeal. The second element of *res ipsa loquitur* is that the injuries are caused by an agency or instrumentality within the exclusive control of the defendant. As Mr. Cooperrider quoted, “exclusive control does not mean actual physical control, but rather refers to the responsibility for the proper and efficient functioning of the instrumentality that caused the injury.” Tinder, 84 Wn. App. at 795; *citing*

United Mut. Sav. Bank v. Riebli, 55 Wn.2d 816, 821, 350 P.2d 651

(1960). It is undisputed that the City is responsible for the proper and efficient functioning of its shut off valves and water meters, the instrumentalities that caused Mr. Cooperrider's injury.

The case cited by the City, Kempter v. City of Soap Lake, is distinguishable on its facts. 132 Wn. App. 155, 130 P.3d 420 (2006). There, the cause of the injury to plaintiffs, sewage backing up in their home, was an obstruction in the pipes. The plaintiffs were unable to demonstrate that the City of Soap Lake was responsible for the obstruction in the pipes. Here, it is undisputed that the City was responsible for failing to remove the water meter. But for the presence of the water meter, there could have been no water in Mr. Cooperrider's pipes to freeze.

The City also attempts to argue that the injury was caused by a burst pipe in an area under Mr. Cooperrider's exclusive control, i.e., his kitchen. In fact, the injury was caused by the presence of the water meter that the City failed to remove, thereby allowing water to flow into Mr. Cooperrider's pipes when no water should have been there at all and to freeze and burst the pipes during a cold spell. Just as the water main was under the exclusive control of the City of Spokane in Metropolitan Mortg.

& Securities Co. v. Washington Waster Power, the water meter here – for which the City was responsible for its proper and efficient functioning under the Tinder standard – was under the exclusive control of the City of Ocean Shores. 37 Wn. App. 241, 679 P.2d 943 (1984). Moreover, in addition to being responsible for the water meter, the City was responsible for the valves that allow water to be turned on and off.

Instead of accepting responsibility for the valves, however, the City argues that anyone could have tampered with the valves, providing as good an admission of negligence as anyone could hope to get. The City’s own brief states that “The water valve controlling flow into the Cooperrider residence is in an unlocked utility box that can be accessed by anyone.” Respondent’s Brief at 17. The City elaborates further in its Statement of Facts:

The water meter is located in a utility box adjacent to the roadway outside the Cooperrider residence. CP 25. The residential service line connecting Appellant’s house to the water main runs through a utility box that contains two valves. *Id.* One is a customer shut-off valve located between the meter and the residence. *Id.* The other valve is for City use and is located between the meter and water main. *Id.* The meter box is not locked to allow customer access, and is accessible to anyone capable of removing the lid who might have a monkey wrench to turn the valve. *Id.*

Respondent’s Brief at 1-2. Mr. Cooperrider fully understands the rationale

of having the customer shut-off valve unlocked and available to customers so that they can turn off their own water in the event of flooding.

However, the reason for having the City's turn-on valve equally accessible to the public is unfathomable. Not securing the turn-on valve and thereby allowing a third person to turn on the water that the City had turned off is as negligent as the City mistakenly turning on the water itself.

The City uses the fact that the customer shut-off valve and the City's turn-on valve are both accessible to the public to argue that Mr. Cooperrider is responsible for the flooding, since he "could have easily avoided any flooding by simply making sure that the customer valve was shut." Respondent's Brief at 20. If both the customer shut-off valve and the City's turn-on valve are accessible to the public, however, any checking that Mr. Cooperrider may have done before leaving Ocean Shores for the East Coast would be rendered useless by any malicious or capricious third person accessing the valve box or by any mistaken or inaccurate City employee doing the same. The City uses its argument as "proof" that Mr. Cooperrider did not establish the third *res ipsa* element listed in A.C. v. Bellingham Sch. Dist., that the injury-causing incident must not be due to any contribution on the part of the plaintiff. 125 Wn.

App. 511, 516, 105 P.3d 400 (2004). The City's "proof" here is as faulty as its case law interpretation.

First, A.C. does not examine the third *res ipsa* element, since it disposes of the doctrine on a finding that the first element was not met. "In cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised." Berschauer/Phillips Const. Co. v. Seattle Sch. Dist. No. 1, 124 Wn.2d 816, 824, 881 P.2d 986 (1994); see Webster v. Fall, 266 U.S. 507, 511, 45 S.Ct. 148, 149, 69 L.Ed. 411 (1925). Therefore, the City's reliance on A.C. is misplaced. Second, the City ignores the fact that since the advent of comparative fault in Washington, the second and third elements of *res ipsa loquitur* are merged and analyzed together. "With the advent of comparative fault, the third element has little relevance and is generally merged into the second element." Marshall v. Western Air Lines, Inc., 62 Wn. App. 251, 261, 813 P.2d 1269 (1991). "These elements are therefore analyzed together." Tinder v. Nordstrom, Inc., 84 Wn. App. 787, 795, 929 P.2d 1209 (1997) (citing Marshall, 62 Wn. App. at 261).

The only way that any negligence at all on Mr. Cooperrider's part could be relevant was if "the event producing the injury resulted from the

plaintiff's negligence, as opposed to the defendant's, and a reasonable inference of negligence on the part of the defendant does not exist, then the plaintiff must not rely on the *res ipsa loquitur* doctrine." Marshall, 62 Wn. App. at 261. This is not the case here. Whether or not Mr. Cooperrider checked the water valves before leaving for the East Coast pales in comparison to the City's failure to remove the water meter and to secure its own turn-on valve.

Finally, the City lists four points that it asserts are not in dispute.

Mr. Cooperrider begs to differ:

1. *"Cooperrider did not file the applicable request form for removal of the meter [n]or specifically request removal of the meter when he wrote the City in August 2002."* As argued above, there is no request form required by the City's Code. Further, Mr. Cooperrider's citation to the City Code provision that listed the fee for removal of the water meter was sufficient notice to the City that he was requesting removal of the water meter.
2. *"Cooperrider did not bring his account current as required by the City for removal of his meter."* The City's Code does not require that accounts be brought current for meter removal.
3. *"Cooperrider's waterline was disconnected at all times relevant hereto by the City and the water was turned on by an unknown third party."* If the City disconnected the water at all times, why did it assess a reconnection charge? While the City has not sufficiently shown that no City employee negligently turned on the water, it has shown

sufficiently that it failed to take even elementary precautions to prevent unknown third parties from tampering with the City's own turn-on valve.

4. *"The flooding was caused by a burst pipe in the kitchen of Cooperrider's vacant house during a cold snap in January, 2004, over 15 months after the correspondence in August 2002. Cooperrider failed to follow up on the issue or take appropriate steps to secure his vacant house, by turning off the customer shut-off valve, an elementary preventative measure that would have avoided any possibility of flooding."* The flooding was caused by water in Mr. Cooperrider's pipes – water that should not have been present in his pipes at all – that was there due to the failure of the City to remove the water meter after Mr. Cooperrider made his request that fully complied with the City's code requirements. Further, the City has shown that it fails to adequately secure its turn-on valve in the valve boxes, meaning that any third person or City employee could undo any shutting-off of the already shut-off water that the City alleges Mr. Cooperrider should have done before leaving for the East Coast.

Respondent's Brief at 21-22. Given these facts, there is enough evidence before this Court for a finding that the trial court improperly granted the City's motion for summary judgment.

C. Mr. Cooperrider has a Strong Basis for a Trespass Claim

In failing to respond to Mr. Cooperrider's legal argument, the City suggests that "proof of an intentional entry by the City onto Appellants' [sic] property" is necessary for a trespass claim. Respondent's Brief at 22.

On the contrary, as cited by Mr. Cooperrider, a person trespasses when he or she “(a) enters land in the possession of the other, or causes a thing or a third person to do so, or **(b) remains on the land, or (c) fails to remove from the land a thing which he is under a duty to remove.**” Bradley v. Am. Smelting & Refining Co., 104 Wn.2d 677, 681-82, 709 P.2d 782 (1985) (emphasis added). Here, Mr. Cooperrider made a written request to the City, complying with City code, asking the City to remove his water meter. The City, ignoring its own code requirements, failed to do so. The City argues that Mr. Cooperrider did not send a second letter clarifying his request and enclosing funds that were not actually required prior to meter removal. Mr. Cooperrider should not have to bend over backwards to accommodate the City’s failure to comply with its own Code. Therefore, the City, under the Bradley standard, both remained on Mr. Cooperrider’s land and failed to remove from the land a thing – the meter – which the City was under a duty to remove. This is a trespass.

Further, it appears that the City is attempting to argue that Mr. Cooperrider is responsible for the burst pipes because – as the City in an unsupported statement alleges – he “took no steps to ensure that his house was secure.” Respondent’s Brief at 23. However, the tort of trespass is an

intentional tort. Even if Mr. Cooperrider were negligent in assuming that the City would comply with its own Code requirements in, first, removing the meter, and, second, not reconnecting water service absent payment, this “negligence” would not serve as anything more than contributory negligence that could reduce recovery as against a negligent defendant, inapplicable in the case of an intentional tort.

D. Mr. Cooperrider has a Strong Excessive Billing Claim

The City attempts to argue that Mr. Cooperrider’s excessive billing claim is barred by res judicata and collateral estoppel, since Judge Copland in small claims court denied Mr. Cooperrider’s claim. However, as noted by the City in its Statement of Facts, Mr. Cooperrider’s claim in small claims court was adjudicated *before* Mr. Cooperrider sent his August 2002 letter requesting water meter removal, a letter that fully complied with the City’s own code requirements. It is the charges accrued after this water meter removal request that Mr. Cooperrider claims are excessive, since the City breached its own duty in failing to remove the water meter.

Finally, the City alleges that Mr. Cooperrider did not actually pay for the excess billings. The City correctly notes that they were paid by the

buyer of the property at closing. CP 27-28. The City fails to note that the sums paid to the City by the buyer were deducted from Mr. Cooperrider's sales price. Mr. Cooperrider was therefore damaged in the amount of the excess billings.

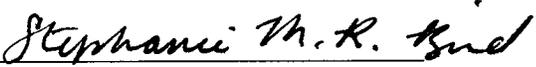
IV. CONCLUSION

As demonstrated in Mr. Cooperrider's Opening Appellate Brief, the trial court erred in granting summary judgment to the City of Ocean Shores. Mr. Cooperrider presented sufficient evidence to support his claims of negligence, an inference of negligence through *res ipsa loquitur*, and trespass. Viewing all facts in the light most favorable to Mr. Cooperrider, the trial court should have denied the City's motion for summary judgment. Furthermore, the City, in attempting to respond to Mr. Cooperrider's Appellate Brief, failed utterly, ignoring Mr. Cooperrider's case law and arguments and substituting its own feeble straw man in their place. The Appellate Court should reverse the trial court's grant of summary judgment to the City and should grant instead

Mr. Cooperrider's own motion for summary judgment, or, alternatively,
should remand the case for further proceedings.

Respectfully Submitted this 5th day of June, 2007

CUSHMAN LAW OFFICES, P.S.


Stephanie M. R. Bird, WSBA #36859

CERTIFICATE OF SERVICE

1. My name is Genevieve Cushman. I am a legal assistant at Cushman Law Offices PS. I am over the age of 18, not a party to this action and competent to testify to the facts set forth therein.

2. On June 5, 2007 I sent via legal messenger the original and three copies of the APPELLANTS REPLY BRIEF to:

Court of Appeals Division II
950 Broadway STE 300
M/S TB-06
Tacoma WA 98402-4454

3. On June 5, 2007 I also sent a copy of the APPELLANTS REPLY BRIEF via legal messenger to the city's attorney, Jeff Meyers, at:

Jeff Meyers
Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S.
2674 R.W. Johnson Blvd.
Tumwater WA 98512

DATED at Olympia WA on July 5, 2007



Genevieve Cushman

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