

No. 35646-5-II  
COURT OF APPEALS,  
DIVISION II  
OF THE STATE OF WASHINGTON

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John Harper, et al., Appellants

v.

Coldwell Banker, et ux., Respondents

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REPLY BRIEF OF APPELLANTS

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FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY RP  
DEPUTY

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## PETITIONERS' REPLY BRIEF

### A. Petitioners' Claimed Error Satisfies RAP 2.3 Criteria

Both Respondents in their responses argue that Petitioners' motion for review must be dismissed on the grounds that it fails to satisfy criteria as set forth in RAP 2.3(d)<sup>1</sup>. Petitioners' claim that the error presented for discretionary review is one of substantial public interest and fully satisfies RAP 2.3(d) requirements for the following reasons.

#### 1. Washington State Legislature Provides Grounds for This Review

The relevant subsections of RCW 2.43.020 provide (1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot *readily speak* or understand the English Language...; and (5) "Appointing authority" *means the presiding officer or similar official of any court...*<sup>2</sup> (Emphasis added) As reflected in the Petitioners' Notice of Hearing Strike filed on October 31, 2006<sup>3</sup> and in Report of Proceedings<sup>4</sup> of the hearing conducted on November 3, 2006, Petitioners clearly indicated to the trial court that assistance of an interpreter at oral arguments would be necessary for the Petitioners. Petitioner Harper under oath stated that interpreter was not available on

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<sup>1</sup> See Respondent's Coldwell Banker Barbara Sue Seal Properties Response pp. 3-4; and Respondent's Pyramid Homes Incorporated Response pp. 3-4.

<sup>2</sup> RCW 2.43.020(1) and (5).

<sup>3</sup> See CP Notice of Hearing Strike-P, Docket Date 10-31-2006 pp. 1-2.

<sup>4</sup> RP at 5.

that particular date and for that reason Petitioners requested continuance, so that they could secure assistance of an interpreter at a later date.<sup>5</sup> Although, Respondent Pyramid Homes Incorporated argues that the trial court weighed the history of the litigation and determined that Respondents were adequately versed in the English language<sup>6</sup>, there is nothing in the record to indicate that the trial court conducted such findings and made such determinations. On the contrary, the trial court never doubted Petitioners' inadequate English language skills. The court denied Petitioners' request for continuance and interpreter without any plausible reasons that can be inferred from the record.

Furthermore, in the regular course of judicial proceedings the appointing authority (the judge) appoints an interpreter when requested by a party with the costs imposed on the requesting party, if such party does not qualify for a free interpreter. It is absolutely unclear why the court imposed the duty to arrange an interpreter on Petitioners. Thus, the trial court's act of not appointing an interpreter and, in alternative, not allowing continuance, clearly so far departed from the accepted and usual course of judicial proceedings as to call for review by the appellate court. The case continued to conclusion in the presence of the Petitioners, but without Petitioners ability to participate at the hearing, clearly in violation of the

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<sup>5</sup> RP at 2-3.

<sup>6</sup> See Respondent Pyramid Homes Incorporated Response pp. 4-5.

Petitioners' due process rights. The superior court has committed probable error when it conducted hearing without an interpreter because lack of interpreter substantially limited Petitioners' freedom to express Petitioners' position at the hearing.

Finally, the court's primary purpose and role is to administer justice and not to convert court proceedings into "drive through McDonald's type services." "A good judge should do nothing of his own arbitrary will, nor on the dictate of his personal wishes, but should decide according to law and justice."<sup>7</sup> "*He who decides anything without hearing both sides, although he may decide correctly, has by no means acted justly.*"<sup>8</sup> (Emphasis added) "The hastening of justice is the stepmother of misfortune."<sup>9</sup>

2. Trial Court Failure to Appoint Interpreter Constitutes Abuse of Discretion

Respondent Coldwell Banker Barbara Sue Seal Properties' position that Petitioners' contentions on review are without merits.<sup>10</sup> In support of its position, Respondent cites *Balandzich v. Demeroto*.<sup>11</sup> However, *Balandzich* is distinguishable and not analogous to the case at

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<sup>7</sup> Quoting from *Legal Thesaurus*, by William C. Burton, p. 306(2<sup>nd</sup> Ed., Macmillian, 1992).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See Respondent Coldwell Banker Barbara Sue Seal Properties Response p. 5.

<sup>11</sup> *Balandzich v. Demeroto*, 10 Wash.App. 718, 720, 519 P.2d 994 (1974).

hand and should not apply in this instance. In *Balandzich*, plaintiffs commenced litigation in August 1967. The action was dragged on for more than four years until January 1971. The *Balandzich* court granted six continuances to the plaintiffs and denied seventh. In case at hand, the Petitioners had reasonable grounds for continuance, which would not unreasonably delay the case. Even though Petitioners' request for continuance could entail "detrimental effect upon the court calendar" and cause "substantial inconvenience" to the Respondents, where as here the motion to continue was made early on, such considerations provide an insufficient bases for denying Respondents' requests because assistance of an interpreter was absolute necessity.<sup>12</sup> For this reason, Respondents' position lacks any merits and not supported by the case law.

3. Respondents' are not Entitled to Attorney Fees and Costs

CR 11 addresses two separate problems: baseless filings and filings made for an improper purpose.<sup>13</sup> A baseless filing is one that is neither grounded in fact nor warranted by existing law.<sup>14</sup> The author of the pleading must have failed to conduct an objectively reasonable pre-filing inquiry into the factual and legal basis of the claim.<sup>15</sup> Fees are not

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<sup>12</sup> *Intercapital Corporation of Oregon v. Intercapital Corporation of Washington*, 41 Wash.App. 9, 17, 700 P.2d 1213 (1985).

<sup>13</sup> *In re Cooke*, 93 Wash.App. 526, 529, 969 P.2d 127 (1999).

<sup>14</sup> *Cooke*, at 529.

<sup>15</sup> *Id.*

awardable under RCW 4.84.185 if any of the claims are meritorious, then the whole action is not frivolous.<sup>16</sup> Here, Respondent Coldwell Banker attorney, Cecil A. Reniche-Smith's, assertion that Petitioners motion is without merits lacks any basis. Petitioners base their motion for review on statutory authority and procedural facts that demonstrate the trial court's error. Respondents' failure to cite any single legal authority on point to support Respondents' position with regards to the interpreter's assistance issue makes it obvious that Petitioners' position is strongly grounded in RCW 2.43. etc.

Finally, Respondents failed to request fees and expenses in accordance with RAP 18.1(b). The rule requires that the respondent include its request for fees and expenses in its opening brief.<sup>17</sup> A request for fees must include supporting argument and citation to applicable statutes or case law sufficient to advise the court of the grounds for awarding fees.<sup>18</sup>

For these reasons, the court should deny Respondents request for attorney fees.

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<sup>16</sup> *In re Cooke*, 93 Wash.App. 526, 529, 969 P.2d 127 (1999).

<sup>17</sup> See *RAP 18.1(b)*.

<sup>18</sup> *Wilson Court Ltd. P'ship v. Tony Maroni's Inc.*, 134 Wn.2d 692, 710 n.2, 952 P.2d 590 (1998).

**B. Conclusion**

For the reasons set out above, Appellants, John Harper and Svetlana Khudina, respectfully request that the Court of Appeals grants Petitioners' Motion for Review, reverse the trial court's Summary Judgment and remand the case to the trial court for further proceedings with assistance of the Petitioners by a Russian speaking interpreter.

Respectfully submitted this 19th day of January, 2007.

A handwritten signature in black ink, appearing to read "B. Petrenko", with a long, sweeping flourish extending to the right.

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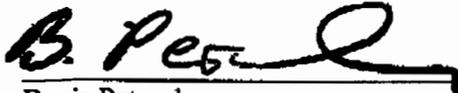
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Dated, January 18, 2007

  
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