

ORIGINAL

NO 37382-3-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

BY  STATE APPELLATE COURT
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COURT OF APPEALS
DIVISION II

ROBERT M. HOUGH,

Appellant

Vs.

FRANK W. STOCKBRIDGE and SUSAN D. STOCKBRIDGE,
Husband and Wife, and the marital community comprised thereof,

Respondents.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
HONORABLE KATHRYN J. NELSON

BRIEF OF RESPONDENT

S. Christopher Easley
WSBA #28029
Attorney for Respondent
THE EASLEY LAW GROUP, P.S.
724 S. Yakima Avenue, Suite 200
Tacoma, Washington 98405
(253) 572-7100



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I. STATEMENT OF FACTS

Mr. Hough and the Stockbridges are neighbors in a rural part of East Tacoma known as Midland, which is located between Puyallup and Parkland. TRP 135-36. The Stockbridges are known in the neighborhood as being friendly people who are willing to help others out and for frequently hosting friendly functions at their home for friends and neighbors. TRP 137 ln 1; TRP 562; TRP 581. Mr. Hough is known in the neighborhood as being unfriendly, rude and wanted nothing to do with the Stockbridges or anyone else in the neighborhood. TRP 590 ln 18 – 591. He posted signs on the fence of his property warning all people not to enter on to his property, including any agent of the city, county or government. TRP 591 ln 4. Mr. Hough has disliked the Stockbridges from the day they purchased their house approximately 20 years ago. TRP 137 ln 17; TRP 561 – 63.

Through the years since the Stockbridges purchased their home, Mr. Hough has waged a campaign of lodging an enormous number of unfounded complaints against the Stockbridges to various governmental agencies such as the Police Department, Fire Department, Health Department, Planning Department and Animal Control. TRP 138 – 40; TRP 616 – 17.

In response to Mr. Hough's numerous complaints to the Pierce County Planning Department, Mr. Gordon Aleshire, head of the department, stated that the nature of the complaints were minor and did not warrant the kind of attention Mr. Hough wanted and that his "stated aim of exacting revenge on your neighbors is not an issue I will comment on." RP (March 22, 2004), p. 98 ln 15.

Mr. Hough also used the Courts to exact revenge against the Stockbridges starting with a Petition for Temporary Anti-harassment Protection Order in Pierce County District Court in 1998 complaining of "illegal fireworks," "loud music during an outdoor party" and a "happy face" sign on the Stockbridge fence. Ex 111, 112. Although the Stockbridges did not cross-petition, the Court issued a mutual anti-harassment order against both Hough and the Stockbridges.¹

While the anti-harassment order was in place, Mr. Hough engaged in a disturbing, voyeuristic and invasive behavior of standing on his rooftop and videotaping the Stockbridge's and their guests in their home and on the property. TRP 144 ln 10 – 147; TRP 536 – 37.

In 2000, Mr. Hough sent three "open letters" to most of his neighbors, writing that he suspected that malicious stories had been told about him in the neighborhood and although he admits that he does not

¹ Mr. Hough appealed the mutual anti-harassment order and the Supreme Court upheld the District Court's authority to issue a mutual anti-harassment order sua sponte in Hough v. Stockbridge, 150 Wn.2d 234, 76 P.3d 216 (2003).

know the identity of suspected perpetrators, does not know the content of the “stories,” and does not know who the stories were told to (if anyone), he states his intention to “sue this individual(s) for slander and libel[.]” Ex.

114. The purpose of his first letter was to generate proof of these suspected stories by offering to purchase testimony for \$1,000. Ex. 114.

In his second “open letter” Mr. Hough increased his offer to \$2,000.00 for testimony, and also warned “If you are guilty of spreading this malicious gossip, may GOD have mercy on your soul.” Ex. 115.

In his third “open letter” Mr. Hough notifies the neighbors that he received an anonymous letter that he did not like and he threatens to use force:

Although we do not know whether the writer(s) intend(s) to carry out the “threats”, we thought you might appreciate being **forewarned in the event that the “bullets start flying.”** . . . Yes, I do not “mess around” when confronted, whether it is “anonymous” or in person. . . . ***I will make sure that all my guns are well oiled, accessible and loaded, “just in case.”*** Thank goodness for the second amendment! Ex. 38.

The neighbors felt threatened and disturbed by these letters and his behavior. TRP 585.

In light of Mr. Hough’s disturbing conduct, the Stockbridges petitioned for a permanent anti-harassment order when the 1998 mutual anti-harassment order expired. Ex. 117. The Court denied the petition.

As a Pro Se Plaintiff, Mr. Hough filed this lawsuit on July 23, 2001. Ex. 119. He claimed the Stockbridges misused legal procedure when they petitioned the District Court for a permanent anti-harassment order because their petition contained what he thought were “lies”. He also claimed the Stockbridges defamed him when they allegedly told certain “stories” to certain people, though he did not know what the stories were or who they were told to.

In their Answers, the Stockbridges denied the allegations and counterclaimed for abuse of process and malicious prosecution. Ex. 4 – 6.

Throughout the course of this lawsuit, Mr. Hough has misused legal process and the tools of litigation including motions, subpoenas, interrogatories and depositions. TRP 349 – 50; TRP 383 – 84; TRP 441; TRP 365; TRP 699 – 700; TRP 369; TRP 385 – 86; TRP 370 – 71; TRP 373.

Mr. Hough misused legal process primarily to exact his revenge against the Stockbridges, to annoy them, harass them, punish them, intimidate them, cause them emotional distress, and extort time, money and resources from them. TRP 187 – 88; TRP 292. Another primary purpose for Mr. Hough misusing legal process was to satisfy his need to act out on the rage he harbored against the Stockbridges for allegedly damaging his reputation. Mr. Hough describes his rage as follows:

The emotion distress is “indescribable”. Containing my “rage also has a debilitating effect on my physical well being. The longer this matter continues the more the rage builds and it is sometimes difficult to contain. If *you* valued *your* reputation you would know what I am having to endure. I cannot explain it to someone who does not have the same or “equivalent” ethics. The *mental* “pain” caused by damage to my good name might be described as *similar* (but greater than) that which me be experienced **a virtuous woman when being savagely raped by some degenerate scoundrel**. The “rage” might be compared to that of **a parent *after* watching as his child is tortured and murdered, while the parent is held in restraints!**”

Ex. 144; TRP 360.

Upon motion by the Stockbridges, the Court dismissed all of Mr. Hough’s claims except those alleged in Paragraph 3.11 of the amended complaint and reserved its decision on CR 11 and statutory terms upon final resolution of the case. RP (June 7, 2002) 17-19.

Paragraph 3.11 of Plaintiff’s Amended Complaint, the only remaining allegation, was a boilerplate allegation by Mr. Hough, claiming that the Stockbridges expressed false and defamatory allegations (or stories) to various persons.

The Stockbridges attempted to discover Mr. Hough’s basis for his defamation claim by sending written discovery, attempting to take Mr. Hough’s deposition (at which he refused to testify and was evasive, uncooperative and unresponsive), and otherwise attempting to discover if Mr. Hough had any evidence or witnesses to support his claim in Paragraph 3.11. Mr. Hough thwarted these efforts by misusing these legal processes

every chance he could. TRP 358 – 59; TRP 365; TRP 699 – 700; RP (April 7, 2004) p. 676-678, 683-685, 742-744, 747.

Going on the offensive, Mr. Hough improperly conducted his own discovery by sending overly broad, duplicative, and confusing interrogatories and requests for production, as well as taking depositions. TRP 349 – 50; TRP 383 – 84; RP (April 7, 2004) p. 647, 681-682. RP (January 17, 2003) p. 18. RP (January 31, 2003) p. 5; Ex. 65 – 72, 140, 141, 160, 161. He also went on a campaign of filing improper and frivolous pleadings and motions (see list below). TRP 478 – 481; RP (April 7, 2004) p. 643-644, 655, 663, 686-689. See also RP (January 17, 2003 p. 13-17).

9/12/01	Motion to Amend Complaint.
10/25/01	Motion for Leave to Subpoena Witnesses.
10/30/01	Motion for Court Order Directing the Release of the Names of Addresses at Particular Addresses.
11/01/01	Motion for Interlocutory Decision...
11/29/01	Motion for Enlargement of Time.
11/29/01	Motion for Interlocutory Decision...
12/12/01	Motion to Compel.
12/12/01	Motion for Reconsideration.
12/19/01	Motion to Amend Motion for Enlargement of Time.
2/27/02	2 nd Motion to Amend Complaint for Clarification.
3/4/02	Supplement to 2 nd Motion to Amend Complaint.

4/24/02 Motion for Reconsideration.

4/25/02 Motion for Reconsideration.

5/13/02 Motion for Clarification of Case Schedule.

6/12/02 Motion for Reconsideration.

6/19/02 Motion for Reconsideration.

7/10/02 Motion to Dismiss.

7/22/02 Motion for Statement of Findings of
Fact/Conclusions of Law and Notice of No Need for
Delay.

8/1/02 Motion to Suspend/Stay Case Schedule.

8/15/02 Motion for Reconsideration.

8/15/02 Motion to Compel.

9/6/02 Motion to Voluntarily Dismiss Plaintiff's remaining
claims.

11/18/02 Motion for Combined CR 16 & CR 26 Conference.

12/20/02 Motion for Reconsideration.

1/7/03 Motion for Enlargement of Time.

1/7/03 Motion to Rescind Jury Demand.

1/7/03 Motion to Compel.

1/15/03 Motion for Injunction Prohibiting Attendance.

1/21/03 Motion to Dismiss His Remaining Claim.

2/5/03 Motion to Allow Discovery to Resume.

2/5/03 Motion for Continuance.

2/20/03 Motion to Deny Statement of Arbitrability.

5/22/03 Motion for Determination.

10/29/03 Objection to Attorney's Withdrawal.

11/17/03 Motion for Reconsideration.

11/24/03 Motion for Order Imposing Sanctions.

12/29/03 Motion for Continuance.

1/7/04 Motion to Compel.

1/14/04 Motion to change Judge and Affidavit of Prejudice.

1/29/04 Motion to Continue Supplement.

3/2/04 Motion for terms under PCLR (c)(5)(C).

3/2/04 Motion to amend his reply.

Due to Mr. Hough's abuse of the discovery process, the Stockbridges moved to compel Mr. Hough to disclose any evidence to support his claim. RP (January 17, 2003). The Court stated that it did not know what Mr. Hough's case was about "despite three volumes [of the court file] and mounds of paper every week," and ordered Mr. Hough to prepare a "simple, one-page, not to exceed one page, description of what the acts of defamation are and who the witnesses are..." RP (January 17, 2003 p. 13-17).

In response, Mr. Hough filed a 2-page document, in which he admitted that he had no evidence or witnesses to support his claim:

I cannot . . . "specifically" describe something . . . which I personally neither saw nor heard, nor to identify any (or all) person(s), whom I did not personally observe, witnessing that particular "something" nor which has ever been "specifically" described, to me . . . nor can I possibly divine what that same particular (unidentified) witness . . . would say about that particular "act," which I neither saw nor heard, and therefore cannot describe. CP 868-869.

After a year and a half of litigation and misuse of legal process, Mr. Hough finally admitted that he had no evidence to support his claim for defamation which he doggedly pursued against the Stockbridges and the court dismissed the claim. RP (January 31, 2003) p. 5-6.

The case proceeded to arbitration pursuant to the MARs which resulted in the arbitrator awarding \$5,000 in damages for Mr. Hough's abuse of process and \$20,315 in attorney's fees to the Stockbridges. Mr. Hough then requested a trial de novo. CP 394.

The case proceeded to trial on the Stockbridges counterclaim for abuse of process. The Stockbridges voluntarily abandoned their claim for malicious prosecution although the court found it was claimed in good faith. RP (March 19, 2004) p. 12-15.

The bench trial took six (6) days because of Mr. Hough's lengthy examination of witnesses and presentation of over ninety (90) exhibits. The Court found that Mr. Hough was liable for abuse of process and awarded

the Stockbridges \$36,000 in damages and \$54,441.94 in attorney's fees under RCW 4.84.185, CR 11, MAR 7.3, and in equity. The Court found multiple acts of misuse of legal process by Mr. Hough including motions, interrogatories, depositions and other uses of process. The Court found that Mr. Hough's improperly misused legal process primarily to punish, harass and cause harm to the Stockbridges, as well as to satisfy his rage and need for revenge.

Mr. Hough appealed the Court's judgment. This Court of Appeals reluctantly reversed and remanded because Mr. Hough had a right to a jury trial:

We recognize that the disputes between these parties have already resulted in two appeals, numerous court proceedings, and voluminous court records and that our reversal will only add to the court's burdens. Nevertheless, the failure to preserve the right to a properly demanded jury trial precludes our designing any other remedy.

Hough v. Stockbridge (unpublished) 129 Wn. App. 1037, 2005 WL 2363795, 4 (2005).

The Court also affirmed the dismissal of Mr. Hough's claims and held that the Stockbridges counterclaim for abuse of process was properly pled. Id.

Despite this Court's clear ruling, Mr. Hough continued to pursue his dismissed claims after remand. Mr. Hough also resumed his improper use of motions and interrogatories:

5/3/07 Motion for leave to amend Plaintiff's complaint.

5/24/07 Motion for appropriate sanctions upon Defendants.

6/6/07 Motion for more definite statement regarding witness testimony.

6/11/07 Motion for more definite statement.

6/11/07 Partial interrogatories to Defendants.

7/6/07 Petition to the Superior Court of Pierce County.

7/23/07 Motion in Limine.

8/1/07 Addendum to Petition to Superior Court.

8/6/07 Motion to compel discovery.

8/21/07 Additional interrogatories to Defendants.

8/21/07 Motion to compel discovery.

9/4/07 Motion for reconsideration and clarification.

9/5/07 Motion for a more definite statement.

9/10/07 Motion for Summary Judgment.

9/30/07 Motion to adjust trial date and allow continued discovery.

10/4/07 Motion for leave to supplement/amend pleadings.

10/15/07 Motion for reconsideration.

10/22/07 Motion for reconsideration re: summary judgment.

10/22/07 Motion for reconsideration re: supplement/amend pleadings.

Finally, the case went to jury trial. The trial lasted seven (7) days because of Mr. Hough's lengthy examination of witnesses. The Stockbridges presented the same four (4) witnesses that testified at the previous bench trial: Mr. Stockbridge, Mrs. Stockbridge, Scott Cando, and Lafcadio Darling. Their testimony was substantially the same as it was at the bench trial.

The jury found Mr. Hough liable of abuse of process and awarded the Stockbridges damages in the amount of \$200,500.00 as follows (CP 323):

Economic Damages:	\$44,532.92
Non-Economic Damages:	\$125,000.00
Attorney's Fees and lawsuit costs:	\$30,467.08
Other compensatory or general damages:	\$500.00.

Mr. Hough declared to the jury in his closing argument that he would not be appealing the jury's decision: "This is going to be my last day. I've fought this thing long enough. Whatever happens, this is the end of it to me." TRP 937 – 38. Despite his declaration to the contrary, Mr. Hough has appealed the jury verdict.

After the trial, the Stockbridges moved for their costs and attorney's fees under RCW 4.84.185, CR 11, MAR 7.3, and in equity. CP 324 – 38. Their total costs and attorney's fees in the case were \$109,458.32. The

Court awarded \$40,844.50 in costs and attorney's fees to the Stockbridges under RCW 4.84.185, CR 11, MAR 7.3, and in equity. CP 368 – 80.

Throughout the entire case, the court has continually shown Mr. Hough an enormous amount of grace and latitude as a pro se litigant. RP (April 19, 2002) p. 21. RP (June 7, 2002) p. 30. RP (January 31, 2003) p. 5-6. RP (March 22, 2004) p. 206. RP (March 23, 2004) p. 305-306. RP (March 24, 2004) p. 430. RP (April 6, 2004) p. 545, 562. RP (April 8, 2004) p. 849. TRP 410, 449, 510 – 11.

II. ARGUMENT

1. The Stockbridges proved the elements of abuse of process.

The body of common law on the tort of abuse of process in Washington is relatively small.

Restatement (Second) of Torts, § 682 (1977) defines abuse of process as:

One who uses a legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abusive process.

See, Sea-Pac Co. v. United Food & Comm'l Workers Local Union 44, 103 Wn.2d 800, 699 P.2d 217 (1985).

The two essential elements of a claim of abuse of process are (1) the existence of an ulterior purpose to accomplish an object not within the

proper scope of the process, and (2) an act in the use of legal process not proper in the regular prosecution of the proceedings. The mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process. Fite v. Lee, 11 Wn.App. 21, 27, 521 P.2d 964 (1974).

The Court in Batten v. Abrams, 28 Wn.App. 737, 745, 626 P.2d 984 (1981) further defined abuse of process stating:

The gist of the action is the misuse or misapplication of the process, after it has once been issued, for an end other than that which it was designed to accomplish.

After stating the above elements and definition of abuse of process, the Court in Batten cited definitions of abuse of process from other legal treatises, starting with B. W. Prosser, Law of Torts s 121 at 856 et seq. (4th ed. 1971):

(T)he gist of the tort is not commencing an action or causing process to issue without justification, but misusing, or misapplying process justified in itself for an end other than that which it was designed to accomplish. The purpose for which the process is used, once it is issued, is the only thing of importance....

The essential elements of abuse of process, as the tort has developed, have been stated to be: first, an ulterior purpose, and second, a wilful act in the use of the process not proper in the regular conduct of the proceeding. Some definite act or ... objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or a

club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort. The cases have involved such extortion by means of attachment, execution, garnishment, or sequestration proceedings, or arrest of the person, or criminal prosecution, or even such infrequent cases as the use of a subpoena for the collection of a debt. The ulterior motive or purpose may be inferred from what is said or done about the process, but the improper act may not be inferred from the motive.

Batten at 745.

Then the Batten Court included the writers of 1 Am.Jur.2d 253 (1962) summarization of abuse of process, stating it a slightly different way:

An ulterior motive or a bad intention in using the process is not alone sufficient, the bad intent must have culminated in the abuse, for it is the latter which is the gist of the action. An action for abuse of process cannot be maintained where the process was employed to perform no other function than that intended by law. Thus the mere issuance of process is not actionable as an abuse of process; there must be use of the process, and that use must of itself be without the scope of the process, and hence improper. Or stated another way, the test as to whether there is an abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do.

Batten at 746.

The Court's inclusion of these various definitions for abuse of process demonstrates that the tort is difficult to explain or articulate and

there is more than one way to describe it. However, the essential elements for an abuse of process claim are clear:

- (1) An improper or irregular use of legal process; and
- (2) The process was used for an ulterior purpose.

A. The Stockbridges proved Mr. Hough improperly and irregularly used legal process in this case.

There is no dispute that Mr. Hough has perverted the legal process of a civil action and the use of litigation tools available in this case. He initiated hundreds of acts using legal process and filed enormous volumes of pleadings, motions, interrogatories, and other papers that can not even be described because of their bizarre nature and which had no factual or legal basis. TRP 293.

The Stockbridges proved Mr. Hough was more than just a stubborn, overly litigious party, who filed extensive confusing pleadings and papers. The evidence showed specific acts of misuse of legal process by Mr. Hough that were not proper in the regular conduct of the proceeding.

Mr. Hough improperly filed motions requesting action by the Court that was unnecessary and did not require Court action. (See Ex 143 and 153 – Plaintiff’s Motion to Dismiss his Remaining Claims, where Mr. Hough filed two separate motions and initiated court hearings to dismiss his own claim). TRP 373. (See also Ex 154 – Motion to Allow Discovery to Resume, where Mr. Hough filed a motion and initiated a court hearing to

resume discovery when discovery had never stopped because the discovery cutoff date had not passed.). TRP 377 ln 8.

Mr. Hough improperly filed motions for reconsideration of the Court's ruling without providing any new basis or reason for the request (such as a change in the facts, change in the law, newly discovered evidence, or other basis except his disagreement with the Court's order). TRP 369 ln 6; TRP 385 – 86. Ex 125. Ex 130. Ex 138. Ex 149. Ex 162. He even improperly filed motions for reconsideration of the Court's denial of a motion for reconsideration. RP (October 26, 2007) p. 18 ln 4.

Mr. Hough improperly filed motions that had no legal authority or basis for the court to grant him the relief he sought. (See Ex 152 – Motion for Injunction Prohibiting Attendance, where Mr. Hough sought to prohibit the Stockbridges from attending a deposition.). TRP 372 ln 16 – 372. (See also Ex 121 – Motion to release names and address, where Mr. Hough requested the Court order the US Post Office to give him the names and addresses of his neighbors).

Mr. Hough improperly motioned for Injunctions, Writs, Subpoenas, and Contempt of Court rulings. Ex 123. Ex 124. TRP 295.

Mr. Hough improperly used the legal process of interrogatories by asking repeated questions over and over again, suggesting what the “correct” answer should be, and providing non-responsive answers to

discovery requests. Ex 140. Ex 141. Ex 142. TRP 349 – 50. TRP 358 – 59. TRP 383 – 84. TRP 441.

Mr. Hough improperly used the legal process of depositions by refusing to answer questions and refusing to show documents he brought to the depositions. TRP 365. TRP 699 – 700.

All of these acts were improper and not within the regular conduct of their respective proceedings. Mr. Hough's acts of misusing process were intentional perversions of their respective legal proceedings. They were not inadvertent mistakes due to his lack of legal training.

Mr. Hough frequently exclaimed that he knows the court rules and the law better than the attorneys and judges in the case. He admitted that he has spent thousands of hours researching and studying the law in this case and that it has consumed his life. TRP 717. TRP 825. He has no job and all he does is litigate this case. RP (April 7, 2004) p. 815-816, 819-820. He told the jury "I'm not stupid." TRP 947.

Mr. Hough's lack of legal training and status as a pro se litigant provided camouflage for his ulterior purposes and allowed him to execute his plan for exacting harm through legal process by initiating improper, wrongful, confusing, and unnecessary legal proceedings. His improper acts of misuse of process were intentional and malicious. He was too intelligent for them to be inadvertent. TRP 251.

As a pro se party to this lawsuit, Mr. Hough must be held to the same responsibility to follow the rules of procedural and substantive law as an attorney. In re Connick, 144 Wn.2d 442, 28 P.3d 729 (2001); Westberg v. All-Purpose Structures Inc., 86 Wn.App. 405, 936 P.2d 1175 (1997).

Mr. Hough cites Sea-Pac Co. v. United Food & Comm'l Workers Local Union 44, 103 Wn.2d 800, 699 P.2d 217 (1985) as holding that misuse of motions, interrogatories, depositions, subpoenas and other similar litigation tools can not be the basis of a claim for abuse of process. He argues that the improper acts of process are limited to technical jurisdictional process such as a summons or writ.

Mr. Hough misstates the holding in Sea-Pac. In that case, the abuse of process claim was based upon an administrative hearing, not a civil or criminal action in the court. The Court held that there must be some process after filing suit, within or empowered by the suit that is not proper. The Court did not rule that the term "process" is limited to a narrow construction as argued by Mr. Hough.

An element which is implicit in both of these definitions is that the defendant must have employed some "process," in the technical sense of the term. As the Court of Appeals has noted, "[t]he mere institution of a legal proceeding even with a malicious motive does not constitute an abuse of process." Fite v. Lee, supra at 27-28, 521 P.2d 964 "Thus, there must be an act after filing suit using legal process empowered by that suit to accomplish an end not within the purview of the suit." Batten v. Abrams, 28 Wn.App. 737, 748, 626 P.2d 984 (1981)

Here, no process issued in Washington courts, therefore there is no abuse of process. Whether the Union used the process of the Board for an improper purpose is for the Board to decide.

Sea-Pac at 806.

The case here is obviously different and thus the acts of legal process that a claim for abuse of process is based upon must be broad in scope.

The fact that some of Mr. Hough's motions were granted does not negate his liability for abuse of process. An action for abuse of legal process will lie even where there was probable cause for issuance of the process and even if the proceedings terminate in favor of Mr. Hough. Fite v. Lee, 11 Wn.App. 21, 27, 521 P.2d 964 (1974).

B. The Stockbridges proved Mr. Hough misused legal process for multiple ulterior purposes.

Again, the test as to whether there is an abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do. Batten v. Abrams, 28 Wn.App. 737, 746.

The purpose for which the process is used, once it is issued, is the only thing of importance. Id at 745 (quoting Prosser). The ulterior motive or purpose may be inferred from what is said or done about the process. Id.

Mr. Hough misused legal process primarily to exact his revenge against the Stockbridges, to annoy them, harass them, punish them, intimidate them, cause them emotional distress and financial damages, and to extort time, money and resources from them. TRP 187 – 88; TRP 292.

He intentionally misused legal process in this case so he could control the actions of the Stockbridges. He forced them to respond to his improper initiation of legal process and forced them to appear in Court. Every act of misuse of legal process was intended to cause the Stockbridges financial and emotional damage and indeed did cause such damage.

Another primary purpose for Mr. Hough misusing legal process was to satisfy his need to act out on the rage he harbored against the Stockbridges for allegedly damaging his reputation. The longer the case continued, the more Mr. Hough's rage grew. His rage was so severe that he compared it to "a virtuous woman being savagely raped" or "a parent watching his child being tortured and murdered." Ex. 144; TRP 360.

These ulterior purposes were the primary reasons for Mr. Hough's many improper acts or misuse of legal process and proceedings in this case.

He misused legal process in this case to accomplish these objectives, which clearly are not “proper in the regular purview or conduct of the process”.

2. The Court properly instructed the jury on the law regarding abuse of process and did not err in denying Mr. Hough’s confusing and improper jury instruction.

The trial court has considerable discretion regarding the wording of instructions and how many instructions are necessary to present each litigant's theories fairly, and an appellate court reviews these matters for an abuse of discretion. Joyce v. State, Dept. of Corrections, 116 Wn.App. 569, 75 P.3d 548 (2003).

It is often said that instructions are proper if they (1) permit each party to argue the theory of its case, (2) are not misleading, and (3) when read as a whole, properly inform the trier of fact of the applicable law. Easley v. Sea-Land Service, Inc., 99 Wn.App. 459, 994 P.2d 271 (2000).

In this case, the Court correctly instructed the jury on the law of abuse of process, using language directly from the cases.

Instruction No. 7 (CP 310):

“Abuse of process” is the misuse of the power of the court. It is an act done in the name of the court and under its authority by means of use of a legal process not proper in the conduct of a proceeding for an ulterior purpose(s) or motive(s).

Instruction No. 8 (CP 311):

The essential elements of a claim of abuse of process are:

- (1) The existence of an ulterior purpose to accomplish an object not within the proper scope of the process, and
- (2) An act in the use of legal process not proper in the regular prosecution of the proceedings.

The test as to whether there is abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process; or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do.

Instruction No. 9 (CP 312):

The ulterior motive or purpose may be inferred from what is said or done about the process, but the improper act may not be inferred from the motive. The purpose for which the process is used, once it is issued, is the only thing of importance.

Instruction No. 10 (CP 313):

One who uses a legal process against another primarily to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by his abuse of process.

Mr. Hough admits that these instructions are an accurate statement of the law of abuse of process, but complains that they are incomplete because there should be been more language defining abuse of process. Specifically, Mr. Hough argues that the trial court abused its discretion by not including the following language from Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.), 119 Wn.App. 665, 700, 82 P.3d 1199 (2004)

There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal

use of the process itself, which constitutes the tort. (Quoting the Batten case, which was quoting Prosser).

As discussed above, the Batten Court quoted portions from B. W. Prosser, *Law of Torts* s 121 at 856 et seq. (4th ed. 1971), as well as the writers of 1 *Am.Jur.2d* 253 (1962), to provide a better understanding of the definition of abuse of process since it can be stated in slightly different ways. Batten, 28 *Wn.App.* at 745 – 46.

The trial court’s jury instructions included some portions of the defining language that accurately stated the law. The above language that Mr. Hough argues should have been included emphasizes that there is more than one way to define it, saying “**in other words**”, meaning “here is another way to state it”.

The Court properly refused Mr. Hough’s requested instruction because it was redundant, unnecessary, and the law was accurately and adequately covered by other instructions. Phillips v. Richmond, 59 *Wn.2d* 571, 369 *P.2d* 299 (1962); Miller v. Staton, 58 *Wn.2d* 879, 365 *P.2d* 333 (1961);

Also, Mr. Hough had an affirmative duty to propose an appropriate instruction and a correct statement of the law in order to preserve this issue for appeal. Goodman v. Boeing Co., 75 *Wn.App.* 60, 877 *P.2d* 703 (1994); City of Bellevue v. Kravik, 69 *Wn.App.* 735, 850 *P.2d* 559 (1993).

The jury instruction proposed by Mr. Hough was confusing, inappropriate, and did not accurately or correctly state the law on abuse of process in Washington. CP 256 – 58. His instructions included language taken from legal treatises that no Washington court has relied upon. Therefore, Mr. Hough failed to preserve this issue for appeal.

Lastly, even if the trial court erred in omitting the language requested by Mr. Hough, an erroneous jury instruction is not otherwise reversible unless the reviewing court is left with a substantial and ineradicable doubt as to whether the jury was properly guided in its deliberations; thus, only in those cases where the reviewing court has a substantial doubt whether the jury was fairly guided in its deliberations should the judgment be disturbed. Furfaro v. City of Seattle, 144 Wn.2d 363, 27 P.3d 1160 (2001). Mr. Hough has not met this burden and thus the jury verdict should not be disturbed.

3. The jury's verdict was based upon sufficient evidence and must not be disturbed.

The Court does not overturn a jury verdict except in the rarest and most extraordinary circumstances:

As we have said on so many occasions, this court will overturn a jury's verdict only rarely and then only when it is clear that there was no substantial evidence upon which the jury could have rested its verdict. Valente v. Bailey, 74 Wn.2d 857, 447 P.2d 589 (1968).

This court will not willingly assume that the jury did not fairly and objectively consider the evidence and the contentions of the parties

relative to the issues before it. Phelps v. Wescott, 68 Wn.2d 11, 410 P.2d 611 (1966).

The inferences to be drawn from the evidence are for the jury and not for this court. *The credibility of witnesses and the weight to be given to the evidence are matters within the province of the jury and even if convinced that a wrong verdict has been rendered, the reviewing court will not substitute its judgment for that of the jury, so long as there was evidence which, if believed, would support the verdict rendered.* Burke v. Pepsi-Cola Bottling Co., 64 Wn.2d 244, 391 P.2d 194 (1964).

The jury is the appropriate assessor of damages and its determination should be overturned only in the most extraordinary circumstances. Miller v. Yates, 67 Wn.App. 120, 834 P.2d 36 (1992).

The credibility of witnesses and the weight to be given to the evidence are matters within the province of the jury, and even if convinced that a wrong verdict has been rendered, the reviewing court will not substitute its judgment for that of the jury, so long as there was evidence which, if believed, would support the verdict rendered. Westmark Development Corp. v. City of Burien, 140 Wn.App. 540, 166 P.3d 813 (2007).

The appellate court will not overturn a verdict as long as the record contains enough evidence to persuade a rational, fair-minded person of the truth of the matter in question. Caulfield v. Kitsap County, 108 Wn.App. 242, 29 P.3d 738 (2001).

As discussed in detail above, there was substantial evidence of the elements of tort of abuse of process to support the jury's verdict that Mr. Hough was liable to the Stockbridges for economic and non-economic damages. Mr. Hough has shown no extraordinary circumstances that support the Court disturbing the verdict.

This jury was comprised of rational, fair-minded people, including: a National Client Service Manager for Russell Investment Group (Juror No. 3), a Senior Computer Specialist (Juror No. 5), a General Manager for Milgard (Juror No. 8), a Lawyer (Juror No. 9), a Registered Nurse for St. Joseph Medical Center (Juror No. 14), and a Pastor for Sunset Bible Church (Juror No. 15). TRP 15 – 17; 108. Their verdict should not be disturbed.

4. **Mr. Hough had more than adequate notice of the Stockbridges' witnesses and the substance of their testimony and can not claim surprise or prejudice.**

The purpose of Local Pierce County Superior Court Rule PCLR 5 regarding disclosure of witnesses is to provide adequate notice of the identity of witnesses the opposing party intends to call at trial and a brief description of the witness' relevant knowledge. PCLR 5. If the witness is an expert, then a summary of the witnesses anticipated opinions is also required. PCLR 5(d)(3).

During the first trial in this case (the 6 day bench trial), the Stockbridges called four witnesses: Mr. Stockbridge, Mrs. Stockbridge, and their former attorney's Mr. Scott Candoo and Mr. Lafcadio Darling. According to PCLR 5 and the case schedule, the Stockbridges notified Mr. Hough that they would be calling these same four witnesses at the jury trial. CP 388.

Five (5) months before the jury trial and four (4) months before the discovery cutoff, Mr. Hough filed an objection with the Court and asked that Mr. Candoo and Mr. Darling be excluded from testifying as either a fact witness or an expert witness. The Court ruled as follows:

Mr. Candoo's and Mr. Darling's expected testimony is adequately stated on the PCLR 5 disclosure. In addition, it should be clear that they are expected to testify as they previously did at the first trial of this matter. Mr. Hough previously heard said testimony. Given Mr. Hough's appeal of the case, he must also have transcripts of this testimony and thus has more than sufficient knowledge to satisfy the court rule PCLR 5.

Mr. Hough's objection to prior attorney's as witnesses is denied. Although professional persons, these person's testimony is described as factual. Thus, they are deemed lay witnesses, and they shall not be allowed to testify as experts unless or until qualified by the trial judge.

CP 8 – 9.

Mr. Hough's argument that he was not adequately notified of these witnesses expected testimony and thus unprepared to rebut is not credible or honest.

After the Court's ruling, Mr. Hough actually included Mr. Candoo and Mr. Darling on his witness list and indicated that they would give testimony regarding procedural and legal errors in the proceedings.

Mr. Hough had more than adequate notice of the substance of their testimony. He had the transcripts of their previous testimony (where he was able to cross-examine them). He had the opportunity to depose these

witnesses prior to the jury trial (which he declined). Further, he had the opportunity to identify any rebuttal witnesses, including experts, according to the case schedule.

Additionally, these witnesses did not give expert testimony. They simply testified regarding their knowledge of what happened in the case. The factual testimony these witnesses gave of Mr. Hough's specific acts of misuse of legal process or improper use of legal process is impossible to separate from testimony regarding the process itself. This is not expert testimony, it is natural factual testimony that gave context to their answers. Their testimony was regarding their own accounts of the facts, dealings and interactions with Mr. Hough based upon their experience in the matter as an attorney. It is no more expert testimony than it is factual testimony.

Mr. Hough also can not complain about these witnesses alleged expert testimony when he elicited such testimony upon his own examination of the witnesses. On multiple occasions, Mr. Hough directly asked these witnesses to give an explanation of a particular procedure or process. TRP 239; TRP 242; TRP 246; TRP 397; TRP 416; TRP 423 – 425; TRP 430. He asked Mr. Darling the following:

Q. Okay. Can you explain to the jury, in your opinion, what a summary judgment motion proceeding would be?

TRP 458 ln 4.

Q. ...Will you please explain to the jury what a CR 37 motion is?

TRP 459 ln 3.

Mr. Hough can not solicit alleged expert testimony during trial, and then claim that it was reversible error for the Court to have allowed such testimony.

5. The Stockbridges sufficiently plead their counterclaim for abuse of process and Mr. Hough had more than sufficient notice of the factual basis of their counterclaim.

This Court ruled, in the prior appeal, that the Stockbridges sufficiently plead a counterclaim for abuse of process. Hough v. Stockbridge, (unpublished) 129 Wn.App. 1037, 2005 WL 2363795, 8 (Div.2, 2005). It is the law of this case.

Nevertheless, Mr. Hough argues that the Stockbridges counterclaim for abuse of process was not sufficiently plead and the trial court's order denying his motion for a more definite statement violated his due process rights to adequate notice of the Stockbridges claim. Mr. Hough continues to argue that he was unaware of the factual basis for the Stockbridges claim despite the fact that extensive discovery had taken place and there was a previous trial. His argument is not credible.

The trial court properly denied his motion for a more definite statement:

As ruled by the Court of Appeals, the Stockbridges adequately plead their counterclaim, and said counterclaim was acknowledged by Hough on several occasions prior to the bench trial of that matter. The Court of Appeals has finally ruled that Stockbridge's allegations sufficiently satisfy general notice pleading requirements.

Where as here, a completed bench trial of a counterclaim has been had, and a transcript of that trial has been received, and where as here, the Court of Appeals has finally ruled on the sufficiency of the pleadings, a motion for a definite statement of the counterclaim's allegation must be denied.

This is especially the case where as here, answers to interrogatories and the court's orders have assured that there will be no different facts, witnesses or evidence to be produced at the jury retrial.

CP 142 – 43.

Furthermore, Mr. Hough can not claim his due process rights were violated when he could have conducted even more discovery regarding the factual basis of the Stockbridges counterclaim for abuse of process. A more definite statement was not Mr. Hough's only remedy to discover the facts. The discovery tools were available to him. Therefore, the Court did not deny Mr. Hough due process by denying his motion for amore definite statement.

6. The juror who wrote a note to the trial judge regarding Mr. Hough's mental health, after three and a half days of trial, was not unfit.

After three and a half days of trial, a juror submitted a note to the judge stating:

Your Honor, has Mr. Hough been evaluated by a mental health professional? There is little doubt that this man is delusional

and would be diagnosed with obsessive compulsive disorder, OCD. Does the Court have the authority to order such evaluation? (No need to respond to this).

TRP 628 – 29.

At this point in the trial, the Stockbridges had rested their case. The juror had observed Mr. Hough during a full day of voir dire, and over two and a half days of trial which included many hours of Mr. Hough examining witnesses. TRP 628 – 29.

The trial court went on recess for four (4) days before resuming trial, giving the parties time to fully brief this issue before the Court made its ruling. TRP 636 ln 24. During this time, Mr. Hough filed a “comprehensive” objection and motion to recuse the juror, alleging that the juror was prejudice. Despite his allegation of prejudice, Mr. Hough admitted that the juror may be right:

Mr. Hough’s concept of OCD is that it is a specific trait which would cause a person to “overdo” things or alternatively; to unnecessarily double or triple check unimportant matters. **Mr. Hough allows that he may very well exhibit signs or even be handicapped with OCD.** Everyone who has been involved in this case, to any degree, knows Mr. Hough is particular and specific and/or “pick” about facts, rules, right and wrong etc. Mr. Hough does not attempt to hide, nor does he apologize for this character trait. Mr. Hough admits that he is much more detail oriented than the majority of the human species.

CP 215 ln 19.

...I remember that **I admitted the reference to OCD** is not – you know, I would – **that may be very true.**

TRP 638 ln 13.

Although Mr. Hough alleged the juror was prejudice, he provided no legal authority for the trial court to dismiss the juror:

THE COURT: Well, we did have a four-day break, and the Court would have expected you to provide any legal authority that was applicable at this time.

MR. HOUGH: Yeah, I don't have it.

TRP 636 ln 24 – 637.

RCW 2.36.110 states as follows:

It shall be the duty of a judge to excuse from further jury service any juror, **who in the opinion of the judge**, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

RCW 2.36.110 (emphasis added).

A trial court's decision to excuse a juror is reviewed for abuse of discretion. State v. Hughes, 106 Wn.2d 176, 204, 721 P.2d 902 (1986). The test for dismissing a juror is whether the record establishes that the juror engaged in misconduct and the misconduct had caused prejudice to the defendant. State v. Jordan, 103 Wn.App. 221, 11 P.3d 866 (2000), review denied 143 Wash.2d 1015, 22 P.3d 803. The misconduct must have prejudiced the defendant to the extent that he has not received a fair trial, which is left to the sound discretion of the trial court. United States v. Klee, 494 F.2d 394, 396 (9th Cir.), *cert. denied*, 419 U.S. 835, 95 S.Ct. 62, 42

L.Ed.2d 61 (1974). United States v. Armstrong, 909 F.2d 1238 (9th Cir.), *cert. denied* 498 U.S. 870, 111 S.Ct. 191 (1990).

Even if the juror's note (which only the Judge received) is considered to be disparaging to Mr. Hough, it is not misconduct. Nelson v. Placanica, 33 Wn.2d 523, 206 P.2d 296 (1949). In Nelson, one juror remarked to another that he could not figure out where the accident happened. The other said that it did not matter, because the defendant was wrong. Id at 527. Another juror commented that based on how she was dressed, the defendant had a lot of money. Id. Another commented that the defendant 'was one of the big gamblers in town.' Id at 529. The Nelson court held that none of these comments amounted to juror misconduct.

Likewise, there is no misconduct or prejudice where a juror makes up his mind prior to deliberations. Tate v. Rommel, 3 Wn.App. 933, 478 P.2d 242 (1970), *review denied*, 78 Wash.2d 997 (1971) (where juror had formed a conclusion and expressed an opinion as to the proper outcome of the case after only the first day of trial). State v. Hatley, 41 Wn.App. 789, 706 P.2d 1083 (1985):

Common experience indicates a juror, or a judge, may form impressions or opinions as to the outcome of a case as he hears each bit of evidence. These impressions or opinions may change from time to time throughout the case. Such opinions or impressions normally are not revealed, and they should not be revealed, until the case is ready for decision. Here, juror Cyrus revealed his private opinion after the first day of trial. It is not unreasonable to expect that many of the other jurors, had they

been questioned during the trial, would have formed some like opinion as to the outcome as did juror Cyrus. If we were to adopt the trial court's conclusion that the mere revealing of his private opinion or impression constitutes such misconduct as to justify a new trial without a further showing that such misconduct prejudiced the outcome of the trial, it would open the door to interrogation of jurors after trial for the purpose of discovering such unrevealed opinions as a basis for the filing of a motion for new trial.

Hatley at 795 (quoting Tate at 937).

In this case, there is no evidence the juror was biased prior to trial. There is also no evidence the juror based his or her opinion on evidence received outside of the trial. The juror's statement was made after three and a half days of trial which included Mr. Hough examining the jury panel during a full day of voir dire and hours of witness cross-examination for two and a half days. After reviewing the briefs of the parties and analyzing the Hatley case and Armstrong case, the trial court concluded there was no misconduct or prejudice. TRP 637 – 39. Mr. Hough has shown no evidence to the contrary.

7. The Court did not err in awarding the Stockbridges their reasonable attorney's fees under RCW 4.84.185, CR 11, MAR 7.3 and in equity.

The Stockbridges' actual costs and attorney's fees in this case through the jury trial are \$109,458.32. CP 372. As part of their verdict finding Mr. Hough liable for abuse of process, the jury awarded the

Stockbridges a portion of their costs and attorney's fees in the amount of \$30,467.08. CP 323.

After the trial, the Stockbridges moved for the remainder of their costs and attorney's fees (a total of \$78,991.24). The Court granted the motion under RCW 4.84.185, MAR 7.3, CR 11, and in equity, but did not award the entire amount of costs and attorney's fees. Instead, the Court awarded \$40,844.50 in costs and attorney's fees. CP 373 ln 22.

A. The jury's award of \$30,467.08 in attorney's fees did not preclude the trial court from awarding the Stockbridges additional costs and attorney's fees under RCW 4.84.185, CR 11, MAR 7.3 and in equity.

The case law regarding attorney fees recoverable as damages is significantly less well-developed than the case law regarding attorney fees awardable as costs of an action. Jacob's Meadow Owners Ass'n v. Plateau 44 II, LLC, 139 Wn.App. 743, 759, 162 P.3d 1153 (2007).

Citing Jacob's Meadow Owners Ass'n, Mr. Hough argues that the trial court did not have authority to award any costs and attorney's fees for any reason because the jury awarded costs and attorney's fees to the Stockbridges as part of their damages, after finding Mr. Hough liable for abuse of process.

This case is distinguishable from Jacob's Meadow Owners Ass'n. In that case, the Court held that attorney fees recoverable pursuant to a contractual indemnity provision are an element of damages and must be

determined by the trier of fact, and it was error for the trial court to award additional attorney's fees for the same contractual provision. Id at 760 – 762.

In this case, the jury awarded the Stockbridges a partial amount of their costs and attorney's fees as a result of finding Mr. Hough liable for abuse of process. After the trial, the Court awarded a partial amount of the Stockbridges' costs and attorney's fees for different reasons. The Court's award was based upon RCW 4.84.185, CR 11, MAR 7.3, and equity. Therefore, the trial court's award of costs and attorney's fees does not invade the province of the jury's award.

B. Attorney's fees under RCW 4.84.185.

RCW 4.84.185 states as follows:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense....

RCW 4.84.185

The decision to award frivolous litigation attorney fees is within the discretion of the trial court and will not be disturbed absent a clear showing of abuse; out of deference to the trial court's personal and sometimes exhaustive contact with the case, the Court of Appeals limits its inquiry to

whether the judge's exercise of her discretion was manifestly unreasonable or based on untenable grounds or reasons. Reid v. Dalton, 124 Wn.2d 113, 100 P.3d 349 (2004).

Statute authorizing award of attorney fees for defending frivolous claim was enacted to discourage abuse of legal system by providing for award of expenses and legal fees to any party forced to defend itself against meritless claims asserted for harassment, delay, nuisance or spite. Suarez v. Newquist, 70 Wn.App. 827, 855 P.2d 1200 (1993).

An action is frivolous, if it cannot be supported by any rational argument on the law or facts. Jeckle v. Crotty, 120 Wn.App. 374, 85 P.3d 931 (2004).

In determining whether an action is frivolous, the action must be viewed in its entirety and only if it is frivolous as a whole will an award of fees be appropriate. Id. at 387.

In this case, the Court viewed the claims and defenses of Mr. Hough in their entirety and specifically found that they were frivolous as a whole:

1. Mr. Hough initiated this frivolous action without reasonable cause and with a malicious motive.
2. The entire action, claims and defenses put forth by Mr. Hough were frivolous.
3. Mr. Hough perverted the entire legal process from the filing of a frivolous suit, to his use of the court's rules and court hearings, to his use of the processes of motions, discovery, settlement negotiations, appeals and pretrial/trial procedures.

4. Mr. Hough had multiple improper or ulterior purposes for initiating his claims and defenses in this lawsuit, and for abusing legal process in this lawsuit, including:
 - a) to get revenge against the Stockbridges by forcing them to respond to the process and to appear in court,
 - b) to increase the Stockbridge's litigation costs and cause unnecessary delay,
 - c) to extort time, money and resources from the Stockbridges,
 - d) to cause emotional distress to the Stockbridges,
 - e) to act out his rage against the Stockbridges,
 - f) to punish the Stockbridges,
 - g) to intimidate the Stockbridges,
 - h) to annoy and harass the Stockbridges,
 - i) to satisfy his obsessive and unreasonable need to always be right and never accept anything with which he does not agree,
 - j) to attempt to cleanse his reputation, and
 - k) to gain some emotional or social acceptance by demonstrating his ability to represent himself and act like an attorney.
5. The improper purposes listed above were Mr. Hough's primary motives for initiating the lawsuit and using legal process in the lawsuit.
6. Although some of Mr. Hough's claims, defenses and use of legal process in the case were technically correct or legally permissible, they were all interposed for the improper purposes listed above.
7. Mr. Hough's claims, defenses, and use of legal process were not well grounded in fact, warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law.
8. Although all of his claims were dismissed, Mr. Hough relentlessly continued in his attempt to establish his claims and other non-relevant issues after the dismissal of his claims, even throughout the trial.

....

11. Mr. Hough has subjected the Stockbridges to his oppressive conduct, bad faith, malicious motives, ulterior purposes, and abuse of the legal process.

12. Throughout the this entire lawsuit, Mr. Hough was at all times attempting to accomplish his objectives which were not properly within the suit and which were often impossible objectives. This happened continuously, even though Mr. Hough knew he had no evidence upon which to base a claim in the action he had instituted.

....

18. The Stockbridges' attorneys attempted at all times to keep their hours to a minimum and that they charged their lowest rate to the Stockbridges.

....

21. The Court has considered other possible sanctions in this matter and the sanctions imposed are reasonable, appropriate and the least severe given Mr. Hough's conduct.

CP 369 – 71.

The Court made the very findings required under RCW 4.84.185 and Jeckle and determined that costs and attorney's fees were appropriate and supported by the evidence

Mr. Hough states that part of the action must not have been frivolous since the previous judge (Judge Van Deren, who presided over the case for a short period of time) stated "I do not find any fault on his part for asserting this case. RP (June 7, 2002) p. 18. However, Judge Van Deren specifically declined to rule on the issue of whether or not his claims were frivolous:

The defendants have asked for CR 11 terms and statutory terms against Mr. Hough for pursuing this case. And I am not at this point awarding any terms for fees to the defendants. I think that should await the final resolution of this case...

RP (June 7, 2002) p. 19.

This is precisely what happened. The Court made the proper finding upon final resolution of the case, that Mr. Hough's entire action, claims and defenses were frivolous under RCW 4.84.185.

C. Attorney's fees under CR 11.

CR 11(a) states in part:

... The signature of a party or of an attorney constitutes a certificate by the party or attorney ... that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry **it is well grounded in fact and is warranted by existing law** or a good faith argument for the extension, modification, or reversal of existing law, and **that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.** ... If a pleading, motion, or legal memorandum is signed in violation of this rule, the court... may impose upon the person who signed it..., an appropriate sanction, ...including a reasonable attorney fee.

CR 11(a) (emphasis added)

The decision to grant sanctions for the bringing of motions interposed for an improper purpose is left to the sound discretion of the trial court and will not be overturned absent clear showing of abuse of that discretion. Eugster v. City of Spokane, 110 Wn.App. 212, 39 P.3d 380 (2002), reconsideration denied, review denied 147 Wn.2d 1021, 60 P.3d 92.

The Court of Appeals reviews a trial court's decision regarding sanctions for abuse of discretion. Roeber v. Dowty Aerospace Yakima, 116 Wn.App. 127, 64 P.3d 691 (2003).

The sanctions rule allows sanctions against anyone who signs a document that is either not well-grounded in fact or warranted by law, or interposed for an improper purpose. Eugster, 110 Wn.App. 212.

The purpose behind sanctions when motions or pleadings are brought to interpose an improper purpose is to deter baseless filings and to curb abuses of the judicial system. Eugster at 231.

As stated above, the Court found that the entire action, claims and defenses put forth by Mr. Hough were frivolous and initiated for multiple improper purposes. Mr. Hough's claims, defenses, and use of legal process were not well grounded in fact, warranted by existing law, or a good faith argument for the extension, modification, or reversal of existing law. Therefore, the objectives of CR 11 sanctions were met in this case.

The trial court also specifically identified the pleadings that contained Mr. Hough's sanctionable conduct (76 pleadings in all). CP 371 ln 5; CP 376 – 380. Biggs v. Vail 124 Wn.2d 193, 876 P.2d 448 (1994) (Trial court failed to make finding that claim was not well grounded in fact or law). Many times, Mr. Hough was given notice that his pleadings,

motions, and other memorandums and actions were improper, harassing, and otherwise sanctionable. TRP 476. Yet he refused to alter his conduct.

Also, the trial court found that the Stockbridges mitigated their damages in relation to Mr. Hough's sanctionable conduct. CP 371 ln 12. Manteufel v. Safeco Ins. Co. of America 117 Wn.App. 168, 68 P.3d 1093 (2003), review denied 150 Wn.2d 1021, 81 P.3d 119. The court also considered other possible sanctions in this matter and the sanctions imposed were reasonable, appropriate and the least severe given Mr. Hough's conduct. CP 371 ln 19.

D. Attorney's fees under MAR 7.3.

MAR 7.3 states as follows:

The court shall assess costs and reasonable attorney fees against a party who appeals the award and fails to improve the party's position on the trial de novo...

MAR 7.3

The Court is required to assess costs and attorney fees against a party who appeals arbitration award and does not improve his position in a trial de novo as to a party whose claim was arbitrated. Yoon v. Keeling, 91 Wn.App. 302, 956 P.2d 1116 (1998).

The term "position," as used in statutes requiring the superior court to assess costs and reasonable attorney fees against a party who appeals an arbitration award and fails to improve his or her position, was meant to be

understood by ordinary people who, if asked whether their position had been improved following a trial de novo, would answer in the negative in the face of a superior court judgment against them for more than the arbitrator awarded. Hutson v. Rehrig Intern., Inc., 119 Wn.App. 332, 80 P.3d 615 (2003).

Supplemental goal of the mandatory arbitration statute is to discourage meritless appeals, as reflected in statute and court rule which require that attorney fees be assessed against a party who fails to improve his or her position as to an adverse party's claim at a trial de novo. Wiley v. Rehak, 143 Wn.2d 339, 20 P.3d 404 (2001).

In this case, the arbitration award was for \$5,000 in damages and \$20,315 in attorney's fees to the Stockbridges for Mr. Hough's abuse of process. Since the jury verdict was for \$170,032.92 in damages and \$30,467.08 in attorney's fees, Mr. Hough clearly did not improve his position.

The trial court found that the Stockbridges incurred \$77,791.24 in reasonable costs and attorney's fees after the arbitration award. CP 372 In 23. However, the trial court only awarded \$40,844.50 in reasonable attorney's fees pursuant to MAR 7.3. The trial court erred, and should have awarded \$77,791.24 in reasonable costs and attorney's fees pursuant to MAR 7.3

E. Attorney's fees as a matter of equity.

Mr. Hough does not challenge the trial court's award of costs and attorney's fees to the Stockbridges on equitable grounds and thus the court's award should not be disturbed.

The Court has equitable authority to award attorney's fees to a party who has been subjected to the opposing party's bad faith or oppressive conduct. Brock v. Tarrant, 57 Wn.App. 562, 789 P.2d 112 (1990), review denied 115 Wn.2d 1016, 802 P.2d 126 (1990); Allard v. First Interstate Bank of Washington, 112 Wn.2d 145, 768 P.2d 998 (1989), opinion amended 773 P.2d 420 (1989).

The trial court made a specific finding that Mr. Hough subjected the Stockbridges to his oppressive conduct, bad faith, malicious motives, ulterior purposes, and abuse of the legal process and awarded costs and attorney's fees as a matter of equity. CP 37 ln 19. Therefore, the trial court's decision must stand.

F. The costs and attorney's fees awarded by the Court were reasonable.

The amount of a fee award is discretionary, and will be overturned only for manifest abuse of discretion. Boeing Co. v. Sierracin Corp., 108 Wn.2d 38, 65, 738 P.2d 665 (1987). A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds, or if no reasonable person would take the position adopted by the trial court.

Allard v. First Interstate Bank of Wash., N.A., 112 Wn.2d 145, 148-49, 768 P.2d 998, 773 P.2d 420 (1989).

While the lodestar method for determining reasonable attorney's fees is the preferred method in Washington, it is not the only method, and it may be adjusted within the trial court's discretion. Henningsen v. Worldcom, Inc., 102 Wn.App. 828, 9 P.3d 948 (2000).

A trial court may consider a variety of factors when determining a reasonable attorney fee award, including the level of skill required by litigation, the time limitations imposed, the amount of potential recovery, the attorney's reputation, and the undesirability of the case. Martinez v. City of Tacoma, 81 Wn.App. 228, 914 P.2d 86 (1996).

In this case, the trial court considered the factors listed above and specifically found the attorney's fees *eminently* reasonable. CP 371 ln 22; CP 373 ln 5.

Furthermore, Mr. Hough failed to use his opportunity at trial and during post-trial proceedings to discredit or otherwise refute the amount of attorney's fees requested by the Stockbridges, beyond his general objection to the attorney's fees award. This is similar to the situation in Reid v. Dalton, 124 Wn.2d 113, 100 P.3d 349 (2004), where the Court upheld an attorney's fees award after the losing litigant had an opportunity to

challenge the statement of services provided, number of hours and the rate, but failed to do so.

8. The post judgment interest rate is “maximum allowable by law”.

The judgment entered by the trial court ordered that “Principal judgment amount, costs, attorney’s fees, and other recovery amounts shall bear interest at 12% annum, or **maximum allowable by law.**” CP 361.

The trial court did not err in allowing the maximum interest rate allowable by law.

9. The Stockbridges should be awarded their costs and attorney’s fees for this appeal under RAP 18.1, RCW 4.84.185, CR 11, MAR 7.3 and in equity.

A. Attorney’s fees for Mr. Hough’s frivolous appeal under RAP 18.1.

In determining whether an appeal is frivolous and was, therefore, brought for the purpose of delay, justifying the imposition of terms and compensatory damages, appellate court considers (1) that a civil appellant has a right to appeal, (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant, (3) the record should be considered as a whole, (4) an appeal that is affirmed simply because the arguments are rejected is not for that reason alone frivolous, and (5) an appeal is frivolous if there are no debatable issues on which reasonable minds might differ, and the appeal is so totally devoid of merit that there

was no reasonable possibility of reversal. Carrillo v. City of Ocean Shores, 122 Wn.App. 592, 94 P.3d 961 (2004).

For purposes of awarding attorney fees and costs, an appeal is frivolous if, considering the entire record, it has so little merit that there is no reasonable possibility of reversal and reasonable minds could not differ about the issues raised. Johnson v. Jones, 91 Wn.App. 127, 955 P.2d 826 (1998).

As demonstrated above, when considered in its entirety, the record clearly supports the award of damages, costs, and attorney's fees for the Stockbridge's counterclaims. There is no reasonable possibility of a different outcome in this case. Even if the trial court made errors in presiding over this voluminous case, those errors were harmless and would not have changed the outcome.

The substance of Mr. Hough's appeal is simply that he disagrees with the jury's findings and conclusions. His ulterior purposes demonstrated at trial remain his primary objective on appeal.

B. Attorney's fees for appeal under RCW 4.84.185, CR 11, MAR 7.3, and in equity.

As discussed above, the trial court properly awarded the Stockbridges their costs and attorney's fees under RCW 4.84.185, CR 11, MAR 7.3, and in equity. The Stockbridges are also entitled to their costs and attorney's fees on appeal under RCW 4.84.185 and CR 11 [Harrington

v. Pailthorp, 67 Wn.App. 901, 841 P.2d 1258 (1992)]; MAR 7.3 [Yoon v. Keeling, 91 Wn.App. 302, 956 P.2d 1116 (1998)]; and in equity [Brock v. Tarrant, 57 Wn.App. 562, 789 P.2d 112, review denied 115 Wn.2d 1016, 802 P.2d 126 (1990)].

III. CONCLUSION

For the reasons stated above, the Court should not disturb the jury's verdict finding Mr. Hough liable for abuse of process and awarding the Stockbridges their damages or the trial court's order for costs and attorney's fees under RCW 4.84.185, CR 11, MAR 7.3 and in equity. The Court should award the Stockbridges their costs and attorney's fees on appeal.

DATED this 9th day of January, 2009.

THE EASLEY LAW GROUP, P.S.



S. CHRISTOPHER EASLEY
WSBA#: 28029
Attorney for Respondents

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____
DEPUTY

WASHINGTON STATE COURT OF APPEALS
DIVISION II

ROBERT HOUGH,

Appellant,

vs.

FRANK W. STOCKBRIDGE, and,
SUSAN D. STOCKBRIDGE,
husband and wife, and the marital
community comprised thereof,

Respondents.

NO.: 37382-3-II

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years and not a party to or interested in the above-entitled action.

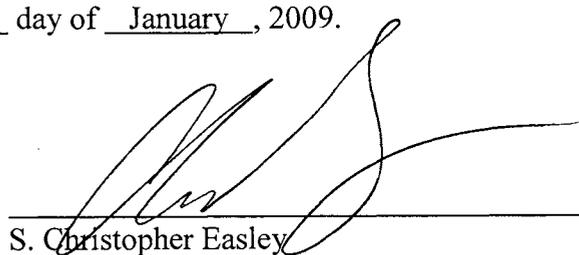
On this date I cause do be served in the manner noted below a copy
of the document entitled:

1) Brief of Respondent

On the following:

Gary Johnson	<input type="checkbox"/>	By U.S. Mail
Mann, Johnson, Wooster &	<input type="checkbox"/>	By ABC Legal Messenger
McLaughlin, P.S.	<input type="checkbox"/>	By Overnight Delivery
1901 South "I" Street	<input type="checkbox"/>	By Facsimile to _____
Tacoma, WA 98402	<input checked="" type="checkbox"/>	Hand Delivery

DATED this 12th day of January, 2009.



S. Christopher Easley