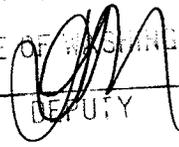


COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY  DEPUTY

NO. 40152-5-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

DAVID H. REGAN, Appellant

VS.

MELISSA MCLACHLAN, et al. Respondents

BRIEF OF RESPONDENTS, MCLACHLAN AND HAWKINS

M. McLachlan and R. Hawkins

6715 NE 63rd Street #103-285

Vancouver, WA 98661

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I. ISSUES ON APPEAL

- A. Did the trial court error in adopting the facts of this case as set forth previously by the appellate court regarding the same subject matter in State v. Cruz, 146 Wn.App. 1006?
- B. Did the trial court error in acknowledging quasi-judicial immunity of the Pierce County Clerk's Office?
- C. Did the trial court error in it's finding that collateral estoppel applied when dismissing Regan's CR12(b)(6) claim?

II. STATEMENT OF THE CASE

A. Procedural History

Regan filed a complaint for damages in the Thurston County Superior Court on July 6, 2009 against defendants McLachlan, Hawkins, Metro City Bonds, LLC, Pierce County, Washington and Clark County, Washington. McLachlan, Hawkins, Pierce County and Clark County filed answers to said complaint.

On October 22, 2010 Regan moved the court ex parte for a default judgment against McLachlan, Hawkins and Metro City Bonds, LLC. McLachlan and Hawkins objected and the trial court granted McLachlan and Hawkins order denying default judgment.

Pierce County filed its motion for dismissal with the court November 6, 2009, noted for hearing December 4, 2009. November 24, 2009 Regan filed his objection to Pierce County's motion and noted his own motion for summary judgment for December 4, 2009. At that hearing date the trial court granted the joint motions of Pierce County, McLachlan and Hawkins striking Regan's untimely motion. Additionally, the trial court granted Pierce County's motion for dismissal.

In January 2010 a Stipulated Order of Dismissal regarding Clark County, Washington was entered by the trial court.

Regan has appealed the trial court's findings of January 19, 2010 dismissing Pierce County, Washington.

B. Factual Background

McLachlan and Hawkins were former employees of Regan from 1998 to 2001. The continued reference to monies that went missing in 2001 involved a break-in to the office building where the foundation and flooring were removed to access a back office which McLachlan, Hawkins and Regan held keys to. Both McLachlan and Hawkins filed a police report, submitted to finger-print comparison and fully cooperated with the investigation of the Tacoma Police Department. Additionally, McLachlan and Hawkins offered to submit to polygraph examinations, which were declined by Regan. Two days following that event, McLachlan and Hawkins severed their employment with Regan. When Regan received information that a member of his direct family had been named as a person of interest in this event, he halted the investigation.

Regan continued to employ Hawkins after this time period as a fugitive recovery agent for several different bail companies Regan was involved with.

On May 1, 2003 the Washington State Department of Licensing suspended the licenses of Regan and Metro Bail Bonds, Inc. (an entity separate and apart from Metro City Bonds, LLC) for unlawful activity. During the period of his license revocation, Regan performed the duties of a broker-agent for surety bonds for Ranger Insurance and Fairmont Specialty Insurance to multiple bail bond companies in the State of Washington.

McLachlan is a former member of the Metro City Bonds, LLC (hereafter referred to as MCB) dba Metro City Bonds. MCB was duly authorized by Pierce County Superior Court case # 05-1-05850-7 to conduct the business of posting surety bonds to the courts and correctional facilities of Pierce County, Washington from April 5, 2005 until August 4, 2006. During that same period of time MCB was appropriately licensed with the State of Washington for the same. Brief of Respondent Pierce County, Washington refers to an abandoned petition for justification erroneously filed by counsel for MCB in case # 05-1-15161-2.

McLachlan and Hawkins contest the untried allegations in Regan's complaint that premiums due and owing to the surety were not paid.

Payments to the BUF (build-up fund) of MCB held by Ranger Insurance and Fairmont Specialty exceed \$53,000.00 with an even greater amount paid as premiums for bonds written. These payments were separate and apart from the brokerage fees assessed by Regan. Regan distributed new surety bond inventory only upon receipt of payment for all previously issued bonds.

MCB posted the surety bond in Pierce County Superior Court case 06-1-01992-1, for the pre-trial release of defendant Javier Quiroz Cruz. When Cruz failed to appear, the Pierce County Superior Court ordered the bond forfeited. Hawkins contacted broker-agent Regan for payment of this forfeiture from the BUF of MCB. Regan declined to initiate the processing of necessary documents. Direct contacts by Hawkins to Fairmont Specialty uncovered that BUF funds paid by MCB and other companies, were held in an account under the name of Regan's daughter Elizabeth Regan.

Hawkins captured Cruz and he was returned to the Pierce County Jail. Counsel, on behalf of MCB, appropriately petitioned the court for return of paid funds under RCW 10.19.140.

Attorney John Cain petitioned the court for payment of said funds by the then defunct MCB and/or McLachlan to the Pierce County Clerk. It is not clear, aside from Regan, whom attorney Cain was retained by or represented. The Pierce County Superior Court granted said motion.

McLachlan appealed, and this appellate court agreed with McLachlan that the Pierce County Superior Court lacked the authority to order McLachlan to do such in the capacity of the criminal court case of Cruz.

It remains contested in the current case before the Thurston County Superior Court if this action was properly brought against McLachlan and Hawkins as motions for dismissal regarding service and jurisdiction are pending.

III. ARGUMENT

Just as Regan draws the attention of the court to selected quotations in Cruz then in the same breathe demand that the appellate court's findings in totality be disregarded, so has he attempted to create confusion by filing copious amounts of self-serving, unauthenticated documents with the trial court which he attempts to use to persuade the appellate court at this time.

Regan attempts to argue that the obligation of the Pierce County Clerk to obey a Superior Court order is somehow less than its obligation to obey a hand-written notation on the face of a deposited check that may or may not have existed at the time the check was originally executed. Regan also attempts to argue that a letter from an out-of-state unrecognized entity directing the Pierce County Prosecuting Attorney to act contrary to a court order should likewise supersede the laws of the State of Washington.

Regan has attempted to recreate himself via a questionable assignment of rights to bring forth this action as a party with standing. Quite a leap from a broker-agent, Regan now asserts himself not only to represent the agency for which he holds said questionable assignment on behalf of, but as a representative to their parent company and all related subsidiaries. The obvious purpose for the creation of this muddled personae is to avoid collateral estoppel by the adding of parties and creating confusion.

In the room of smoke and mirrors created by Regan, he has also attempted to revisit his motion for default judgment in a manner which is both untimely and not appropriately brought before this appellate court.

Finally, further convoluting this action are the challenges regarding service and jurisdiction of these parties, which remain pending before the trial court at this time.

IV. CONCLUSION

Based upon the aforementioned, Respondents McLachlan and Hawkins request that this appellate court affirm the trial court's previous rulings.

DATED this 15th day of November, 2010


Melissa McLachlan

DATED this 15th day of November, 2010


Rex Hawkins