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COURT OF APPEALS
DIVISION II

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

No: 42361-8-II

**RICHARD SORRELS, et al
Appellant**

v.

**SUZANNE E. SWANSON et al
Respondents**

APPELLANT'S BRIEF

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I. CITATION TO SUPERIOR COURT DECISION

The appeal is based on entry of Orders Distributing Funds after an Arbitration Award and the attendant Orders supporting the distribution.

II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED

A. ERRORS

1. The Court erred in distributing funds held in the Court registry to the Defendant Swansons because no Judgment entered and the case was properly noted for trial de novo.
2. In order to enter an award on an arbitration award to support a release of funds or the amount, the Court should have entered a Judgment.
3. The Trust was never a party to the lawsuit, so the dismissal of the Trust was inappropriate and inapplicable.
4. After the trial de novo was filed the Court erred in dismissing the trustee from the case because a trial de novo returns all parties to their original position

regardless if they are represented by counsel.

5. Richard Sorrels, having been the only party who Defendants sought relief from in the Counterclaim, should have been permitted to contest the Arbitrator's award and not have been dismissed.
6. Any aggrieved party may file a trial de novo and once a trial de novo is properly filed and served all parties remain in the suit as if no arbitration had occurred and dismissal of the parties is unlawful.
7. The agreement for the deposit of funds into the court registry required the matter being fully resolved which upon filing a trial de novo and appeal the distribution was premature.

B. ISSUES

1. Did the Court err in Order the release of funds from the Court registry to the Defendant Swansons?
2. Did the Court err when it failed to enter a Judgment to support the amount of the judgment and the release of funds?
3. Did the Court err when it dismissed the Trust from

the case?

4. Did the Court err when it dismissed the Trustee from the case?

5. Did the Court err when it dismissed Richard Sorrels from the case?

6. Did the Court err in denying Plaintiff Trust and/or Sorrels a right to a trial de novo.

7. Did the court err in distributing funds from the Court registry before the case was fully resolved?

III. STATEMENT OF THE CASE

This case arises because Richard Sorrels after a unfavorable arbitration award filed a trial de novo and the Court dismissed all the Plaintiffs upon Motion of the Defendants and entered an Order providing the Defendants the bulk of the funds held in the Court registry.

The situation arose when Richard Sorrels (Sorrels) for himself and as Trustee of RES Trust (RES) entered into an agreement with Suzanne Swanson and Merrill Swanson (Swansons) to facilitate the refinancing of certain property. (CP 101; 202)

This situation is odd because it involves a brother and sister. Richard Sorrels was the Trustor, Trustee, and a beneficiary of the RES trust and Suzanne Swanson was a Co Trustee. (CP 7; 14; 196). RES through Richard Sorrels as trustee owned a number of properties including the property at issue in this case. (CP 7)

In March and April of 2005, Plaintiff and his sister (a co-trustee) discussed mortgaging the property located at 9406 Glencove Rd. Gig Harbor WA. The property was worth

\$335,000.00 and had underlying mortgages of approximately \$160,000.00. (CP 45, 72)

To facilitate the mortgage they decided to transfer the property to her name and she would then refinance the property. (CP 101). They attempted to locate a suitable lender and were ready to close the transaction in spring of 2005. At that time Pierce County had judgments against Richard Sorrels and demanded to be paid from the proceeds of any loan. (Arbitration Exhibits). At that time the refinancing fell through and the parties were back to where they started except the title remained in the name of the Swansons who transferred her ownership interest to Merrill Swanson in May 2005. (CP 190)

As soon as the financing fell through Richard Sorrels contacted Merrill Swanson and the Swanson's agreed to return the property to the trust. (CP 191) Merrill Swanson made arrangement to return the property via deed on numerous occasions, but he continued to provide excuses not to meet. (CP 191). Plaintiff became nervous because the property's value was far in excess of the debts and the

agreement provided that if he could not refinance within 12 months the property belonged to the Swansons.

Shortly thereafter communication between Mr. Sorrels and the Swansons became tense. (CP 191). Mr. Sorrels as trustee did not believe it was appropriate to agree to pay off debts that were either in his name alone or were otherwise contested when the trust was the owner of the property. (CP 190). Sorrels related to Mr. Swanson that the only debts to be paid off with the proceeds were the trust debts, and he would deal with his debts as he saw fit. Mr. Sorrels related that the other debts needed to be removed judicially because they were not trust debts. (CP 190). Again Mr. Sorrels wanted the deed back in the name of the trust. (CP 191).

This is when things became deceptive. The Swansons on their own located a lender and obtained an approval for a loan. (CP 190). The Swansons left Mr. Sorrels completely out of the transaction despite their promise not to do anything without approval by Mr. Sorrels. The original plan was to provide for 12 months of payments and for funds to improve the property for an adult family home (CP 101; 191).

The Swanson obtained the loan, paid off Mr. Sorrel's personal debts and failed to provide any funds in reserve and failed to provide any funds for improvements as required by the agreement. (CP 101; 190). They paid off some debts that had no support to Lending and Leasing for \$15,000.00 from which they personally had an agreement for a kick back of \$5,000.00 from Lending and Leasing. (Arbitration Exhibits).

Mr. Sorrels learned about the amount of the loan the Swansons took out against the property from public records. (CP 190). The Swansons never provided anything to Mr. Sorrels about their loan or the payoffs. They failed to tell him anything about the refinance until weeks after closing. Mr. Sorrels directed Mr. Swanson to return the deed on the day Mr. Swanson told him they had already refinanced. Even then Mr. Swanson would not provide the closing documents and Sorrels received nothing from the loan for either payments or for the adult family home. (CP 190; 192)

The Swansons shut off the power to the property and had the Sorrel's mail transferred to their home. (RP 180).

Then it became clear that the Swansons' intentions were likely to have the property remain theirs if the trust could not refinance the property. (CP 51-53; 55-67; 191). The property being 2.2 acres with 140 feet of salt water frontage with a 5 bedroom three bath home was worth in excess of \$350,000 with a new note of \$260,000. Contract sale price was to be \$333,500.00 (CP 45). If the Swansons could delay the process until April 2006, then they would skim \$90,000.00 in equity from the property. (CP 88; 101; 189).

In December 2005, Mr. Sorrels arranged financing to have the property returned. (CP 89; 192). From that time forward Mr. Sorrels requested the Swansons cooperation to execute the document necessary to accomplish the refinance. (CP 55; 89-90; 192). The Swanson's refused. Thus, the filing of this lawsuit, via Summons and Complaint, to compel compliance with the agreement before the 12th month anniversary of the agreement which would have vested title in the Swansons. (CP 3)

In the face of the lawsuit, the parties entered into another agreement where they would return the property, but they

never did. (CP 100). Mr. Sorrels became frustrated so he went back to attorney David Smith. Many letters went back and forth between the parties requesting compliance with the agreement for the Swansons to provide the deed to allow for a refinance. (CP 55-67; CP 94). It was clear that the Plaintiff arranged for Ms. Clinton who had the credit and funds to refinance and then return the property and release the Swansons from their obligation. (Id.). The Swansons continued to obstruct the process. (CP 68-70; 89). In exhibits presented at arbitration, but not in the Court file, Defendants sought to extort \$18,000.00 from Plaintiff stating it was a business deal and not intended to be a gift.

Demands went back and forth and finally Mr. Sorrels needed to file a Motion to enforce their agreement.

Things got worse from then. After Depositions the Swansons agreed to return the property and the parties signed another agreement dated July 13, 2006. (CP 42). In the agreement the Swansons agreed to cooperate with the refinance and to execute all documents necessary to

accomplish that purpose, but refused and obstructed the process. (CP 20, 23-34, 38-41; 44)

On December 29, 2006, the Court affirmed the Agreement that required Defendant Swansons to return the property and if refinance could not be obtained by April 17, 2007, title was to be quieted in the Defendant Swansons. It became apparent through time that these deadlines to transfer motivated a deceptive plan to delay the transfer of the property back to the trust. (CP 49).

On April 9, 2007, Mr. Swanson attempted to sabotage the pending financing of the property because, as mentioned about the contingency, if the trust did not refinance timely then the Swansons owned the property. (CP 51, 103-110)

If Mr. Swanson could convince the lenders not to close then the property would be his and his wife's. (CP 53). Among other things he did, unbelievable as it might sound, Mr. Swanson wrote a letter to On Point Mortgage indicating he copied the Pierce County Prosecutor, Heath Department, and local Newspaper relating:

1. 9406 Glencove Rd. had been cited by Peirce Count Health department for contaminants
2. 9406 Glencove Rd. is not in marketable condition
3. Richard Sorrels went to jail for months for code violations
4. Liability is huge on a mortgage company who loans on the property, etc.

(CP 106-7)

Despite this letter and other efforts, and after continued refusals by Mr. Swanson to cooperate, on May 11, 2007, the Court ordered the Defendants to immediately sign the necessary documents to transfer the property. (CP 96). On May 17, the letter from David Smith continues to profess the Defendants refusal to cooperate despite the Court's order. (CP 97-99). They went to closing a number of times, but refused to sign. (CP 109-110)

On May 18, 2007, the Court after being provided substantial evidence of bad faith dealings by Defendants Swanson entered an Order setting trial "to determine if the Defendants have been acting in good faith" . . . (CP 111)

On May 30, 2007, the property was refinanced and the Swanson loan was paid off. (RP 115). On August 10, 2007, Patrice Clinton a non party purchaser of the property agreed to deposit \$61,142.71 from her loan proceeds into the Court registry. (CP 117; 167).

In this case Plaintiff sought almost \$180,000.00 for additional indebtedness and payments that the trust was required to absorb on refinance. He argued that had the Defendant Swansons returned the Deed as promised and not obstructing the return of the property, the trust debt would have been \$160,000.00 and therefore they would have been \$190,000 in equity remaining. (CP 190) The new loan was \$317,300.00 plus \$20,506.76 in cash. This left only about \$13,000.00 in equity after the cash payment. Plaintiff alleged if there is a breach of contract or bad faith in a fiduciary duty, the Plaintiff was damaged in the amount stated above.

The Plaintiff in his complaint alleged breach of contract seeking return of the property, breach of good faith, fiduciary duty and fair dealing, among other claims, and sought damages for damages for shutting off the power, improper loan

payoffs, business interruption, negligence, and other relief the court deems suitable. (CP 7-11).

Virtually all of the claims presented by the Defendants were against Richard Sorrels individually and personally, that is why it seemed so out of place for the Court to not allow him his trial de novo on the \$50,000.00 award against him. More specifically, Defendant Swanson's Counterclaims were:

Counterclaim 4.1 Richard Sorrels misrepresented material facts.

Counterclaim 4.2 Richard Sorrels clouded title to property.

Counterclaim 4.3 Richard Sorrels conducted illegal activities.

Counterclaim 4.4 Richard Sorrels/RES Trust committed waste on the property.

Counterclaim 4.5 Judgment against RES or R. Sorrels for costs to remove vehicles.

Counterclaim 4.6 Titles should be quieted against RES and R. Sorrels.

Counterclaim 4.7 Reservation to Join Parties.

(CP 14-17)

In July 2007, David Smith informed the Court that the case had changed from its original posture and the parties were now seeking monetary damages against each other

rather than the return of the property because after Court Ordered cooperation it occurred and the property was returned. (CP 113). At the hearing for Summary Judgment, counsel for Plaintiff also informed the Court that the case had changed in some elements from the transfer of the property to monetary requests between the parties. (RP 6/17/2011; p. 4 l. 7-20. The request for an injunction requiring the return of the property was now moot because of the transfer. (CP 113).

The case went to arbitration and the arbitrator entered and sealed an award against Plaintiffs. (CP 163). It is clear on Arbitration Award that the Arbitrator Donald Powell entered the award against the Plaintiff, and the only Plaintiff identified in the Award was Richard Sorrels, not the trust or against him as Trustee. (CP 163). The award does not mention the award being against plural Plaintiffs but against Richard Sorrels as Plaintiff and him alone. (CP 163).

Richard Sorrels timely filed and served a Trial De Novo contesting the amount of the award based on the Defendants' counterclaims. (CP 119).

On January 26, 2011 Defendant Swanson moved the Court for an Order denying RES trust the right to a trial de novo. (CP 122-3). This was based on the allegation that the RES Trust was a party at some point, and since it was then it

needed to file the trial de novo through counsel. Because no attorney signed for it, it must be denied the right to a trial de novo. (CP 123). Plaintiff argued that the arbitration award was entered against Richard Sorrels so he is an aggrieved party (RP 2/4/2011; p. 5, l 8-9.) Plaintiff's counsel also argued even if there was a problem, CR 11 would provide the remedy that the sanction would not warrant dismissal. (2/4/2011; p. 7, l. 7-12).

The Court entered an Order denying the trust the right to seek the benefits a trial de novo might bring, but retained Richard Sorrels and Trustee and Individually. (CP 124)

The case was called for trial on May 5, 2011. The parties were ready, but there were no courtrooms available and on May 12, 2011, after waiting 3 days, the Court issues another case schedule (CP 125).

On May 13, 2011 Defendants Swanson filed a motion for Summary Judgment. (CP 127-8). The issue asserted was the since the initial complaint and amended Complaints sought the return of the property to the Trustee, Sorrels individually and as trustee presented to claim for relief. (CP 127).

Plaintiff opposed the Motion because Sorrels individually and as trustee were the named parties and were

clearly the subject of their own claims and the Counterclaims for any financial relief awarded at arbitration. (CP 149-151; 154-158). Plaintiff's counsel reminded the Court of the bad acts of the Defendants and the issue for trial. (6/17/2011p. 2, l 15-122). The Court On June 17, 2011, the Court entered an Order Granting Summary Judgment (RP 192).

The Court related that it was a close call, but the Complaint and agreements even though signed individually Sorrels would have no damages because he was not a real party in interest. (RP 6/17/2011 p. 11 l 11-15). Counsel asked the Court to enter an Order dismissing the parties and a Judgment to compare that with the Arbitration Award. (RP 6/17/1011; p. 17. L. 2-7; l. 12-14). Counsel argued that if Sorrels was never a real party in interest then no judgment was entered against him, thus he was the prevailing party because the arbitrator awarded \$50,000.00 against him (RP 6/17/2011, p. 19, l. 5-9). The Court never entered a judgment. Counsel again reiterated that a Judgment clarifying who had a judgment against whom was necessary for the determination of prevailing party (as well as for the determination against whom the Counterclaims were against). (RP 6/17/2011, p. 23. L 6-13)

Shortly thereafter the Defendants moved for an award of attorney fees because they prevailed arguing Plaintiff failed to improve their position on the trial de novo which the Court granted. (CP 205). Plaintiff argued that there was no trial de novo, and in order to determine whether a party improved their position then a Judgment must be entered before the distribution of funds could be ordered. (CP 176).

Plaintiff argued that if the arbitration award was against Sorrels, and if he was dismissed and not responsible for the judgment, then he must be the prevailing party. Counsel for Plaintiff again asked the Court for findings, judgment, and order, and if that were done, were the claims against Sorrels since the vast majority of counterclaims were against him individually (RP 7/8/2011 p. 4 – 6; p. 7 - 8).

Additionally if Sorrels as trustee was dismissed, then he also would be the prevailing party. This was the reason a Judgment on trial de novo would be mandatory. (CP 176-177). In essence of all parties that filed the lawsuit were dismissed because of a lack of standing, then who could a judgment be rendered against to support a distribution of funds from the Court registry. This argument also incorporated the case law that provides all parties to a lawsuit

must assert their claims and counterclaims once any party to the lawsuit files a trial de novo. (RP 176).

On July 8, 2011, the Court affirmed the decision and ordered attorney fees and ordered the distribution of funds to the Swansons and their counsel. (RP 178).

On July 15, 2011, the Court reviewed the matter again. Plaintiff's Counsel made the same arguments. (7/15/2011. p. 3-4). The motion was denied. (RP 188; 213). The funds were disbursed on July 28, 2011 (CP 214-215). The Court was reminded by Counsel that there must be a Judgment entered by the Court post arbitration to allocate liability. (RP 7/28/2011; p. 6; I 2-6). The Court proceeded anyway.

On August 26, 2011, the Court heard the matter for the last time denying reconsideration. (CP 241). The Court denied the argument that the Agreement required resolution of the matters between the parties before distribution. (RP 8/26/2011. P. 1-2)

IV. ARGUMENT

It is unbelievable that the trial court would not allow a trial de novo. It is basic constitutional right and when the proper process is followed, it is provided to aggrieved parties as a matter of right.

There are many issues on appeal. It might be useful to start with the simplest issue, and that is whether once an aggrieved party to a lawsuit files a trial de novo, are the parties entitled to a trial de novo.

RCW 7.07.050 requires that a trial be held upon the filing of a trial ne novo. That is upon all issues of law and fact, including a right to jury. The law is also specific that any aggrieved party may file the request for the trial de novo. That is an issue mentioned in the Motion for Reconsideration. The trial de novo is defined as a “trial that is conducted as if the parties had never proceeded to arbitration.” Malted Mousse, Inc., v. Steinmetz, 150 Wn.2nd 518, 79 P.3d 1154. One party that files a trial de novo brings in all parties and all issues, even if only one party seeks the de novo. Perkins Coie v Williams 84 Wn. App. 733, 929 P.2nd 1215 (1997). This would again merge the arguments that Sorrels, individually, may not have the same interests as Sorrels as trustee, but by filing to de novo request, would mandate that

Sorrels as trustee, be a party to the case and be subject to all claims and defenses as are the Defendants. (Even if the RES Trust were a party, it would also be a party to the trial de novo whether it wanted to be or not because all parties are brought back in via the filing of the trial de novo).

Issue of whether Sorrels as trustee should have been dismissed requires a trial because he has many claims that can be presented apart from the trust, but relating to the same corpus. He asserted claims and claims were asserted against him personally so he is entitled to defend against and present those claims de novo.

A trustee has the right to bring an action in his own name as the real party in interest. Title and Trust Company v. Columbia Basin Land Co. 136 Wash. 63 (1925); Eichner v. Cahill, 108 Wn. 2nd 108, (1941); In re; Hannigan Susamu Igaue, v. Howard, 249 P. 2nd 558 (1952 Cal). Co-trustees may maintain an action against another trustee. Hirchwald v. Erlebacher, 29 A. 2nd 798 (Del 1943) (Richard Sorrels and Suzanne Swanson were co-trustees when the agreement was executed and the property transferred to her individually. St. James Church of Christ Hoiliness v. Superior Court. 287 P.2nd 275 (Cal 1955).

Defendants admit that Suzanne Swanson was a trustee under the trust in their Answer. Therefore any claims he may assert he may assert then in his personal capacity for the benefit of a trust against a co-trustee as was done here.

The other anomalies relate to the mechanism in which the Court released the Arbitration award and attorney fees to Defendants without ever entering a judgment of any type. Who prevailed against whom? Even opening the arbitration award would violate MAR 7.2(a). Also the Court rule on fees pursuant to MAR 7.3 award fees on the trial de novo would by direct inference require a trial de novo. In this case there was no trial de novo, because the trustee was dismissed because the trust did not have a lawyer representing it, and Richard Sorrels was dismissed because the Court found he was not a party in interest.

V. CONCLUSION

The real reason for this appear is because a large amount of money were taken from an account owned by Patrice Clinton that were held by the Court. The reason for the high amount was based on allegations of what Richard Sorrels had done or not done. The claims of the trust were mostly resolved when the property was transferred back to the trust. Then after the award, Richard Sorrels filed a trial de

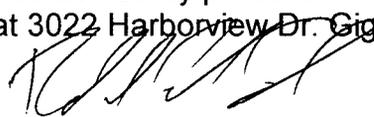
novo because he primarily wanted to dispute the claims the Defendants brought against him. It is inherently unfair to obtain a counterclaim against someone and then assert that they could not prevail on their original claims so they must be dismissed and the Counterclaims stand.

Dated: 3/8/2012



Frederick HETTER
WSB#: 21798

I declare under penalty of perjury that on March 8, 2012, John Rorem attorney for Respondent was served by personal delivery to his law office located at 3022 Harborview Dr. Gig Harbor WA


Richard Sorrels.

3/8/2012 at Tacoma WA

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