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DIVISION II

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Appeal No. 46747-0-II
Superior Court No. 14-2-07793-4

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

RICHARD SORRELS, PATRICE CLINTON,
RYANSCREST TRUST

Defendants/Appellants,

v.

RICHARD JOHNSON AND SALLY JOHNSON,

Plaintiff/Respondent.

RESPONDENTS' RESPONSE BRIEF

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COME NOW the respondents/plaintiffs, Richard Johnson and Sally Johnson, by and through their attorneys, Comfort, Davies & Smith, P.S. and Steven W. Davies, and respectfully submit their brief to the Court of Appeals, Division II, State of Washington:

I. PLAINTIFFS' INTRODUCTION AND RESPONSE TO DEFENDANTS' ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR.

The defendants have raised seven assignments of error. The plaintiffs' answer to each assignment of error and to the issues pertaining to each assignment of error is the same: the trial court did not commit error.

Curiously, the defendants failed to address the July 3, 2014 Stipulated Order Clarifying Plaintiffs' Obligations on Execution of Writ (CP 367-370) and the Order Denying Defendants' Motion to (1) Set Aside July 3, 2014 Order; (2) Quash Writ and (3) Dismiss Case entered on August 15, 2014 (CP 615-616). The Stipulated Order addressed and resolved all issues pertaining to the unlawful detainer proceeding and the issuance of the Writ of Restitution by the Commissioner on May 27, 2014 (Defendants' Assignments of Error 1 - 6) and further, resolved all issues related to the defendants' property (Assignment of Error 7). The Stipulated Order stated in part:

Plaintiffs seek clarification of their obligations after the Pierce County Sheriff executes on the Writs of Restitution issued by the Clerk pursuant to the Order entered by Commissioner Gregorich on May 27, 2014, which order decreed that plaintiffs were entitled to possession; that plaintiffs' Motion for Writ of Restitution be granted; and that said Writ of Restitution be issued "forthwith". In addition, this stipulated order is intended to further clarify the Court's ruling on June 27, 2014 (Lines 16-23)...

The Writs of Restitution issued by the Clerk pursuant to the order entered by Commissioner Gregorich on May 27, 2014

may be extended by plaintiffs ex parte out through August 24, 2014 provided execution of the writ shall be stayed through August 3, 2014 (Lines 7-17)...

Plaintiffs shall identify all of defendants removed property and its location and authorize defendants to retrieve such property without cost (Lines 23-bottom of order)...

This order is being entered by agreement and shall constitute a settlement as to this litigation only. (Exhibit A)...

The parties agreed by stipulated order that the Writ issued on May 27, 2014 “entitled” the plaintiffs to possession of their property, that the Writ was to be issued “forthwith” and could be “extended...through August 24, 2014”, that the defendants could “retrieve [their] property without cost”, and that “this litigation” was settled. All issues related to the unlawful detainer proceeding, the issuance of and the execution upon the Writ of Restitution, the defendants right to retrieve their property, and the plaintiffs’ possession of their property were resolved by agreement and settlement between the parties. Clearly, this litigation was settled. Therefore, the appeal by the defendants is without merit, there are no legally debatable issues, and there are no legitimate arguments for an extension of the law.

II. STATEMENT OF THE CASE.

A. Facts and Procedure

There were five court hearings in this matter:

1. Plaintiffs’ Motion for Writ of Restitution - May 27, 2014.

The plaintiffs pro se filed their Complaint for Unlawful Detainer on April 11, 2014. CP 4-13. On May 1, 2014, the defendants were served with filed copies of Plaintiffs’ Amended Summons, Complaint on Unlawful Detainer/Eviction, Order to Show Cause, Affidavits of Non-Military Service, Note for Commissioner’s Calendar, Order Assigning Case to Judicial

Department and Setting Review Hearing. CP 21-22. The plaintiffs also filed with the Court and served on the defendants, together with additional pleadings, Documentation of 20 Day Notices to Defendants (CP 107-125), Documentation of Condition of the Property (CP 660-673), Supportive Documentation Regarding Vehicles, Junk (CP 674-721), Document List Regarding Prior Notice to Vacate (CP 80-106), and Declaration of Ownership (CP 129-152). Counsel for the defendants appeared on May 5, 2014, and counsel for the plaintiffs appeared on May 16, 2014.

The original Order to Show Cause scheduled the hearing for May 7, 2014, CP 16-17. However, the date was later changed, by agreement, to May 27, 2014, CP 127-128. In addition to the pleadings identified above, the parties submitted their respective pleadings in anticipation of the show cause hearing (defendants - Response to Motion for Writ of Restitution (CP 23-58); plaintiffs - Reply in Support of Writ of Restitution (CP 153-158), Affidavit of Sally Johnson in Support of Plaintiffs' Reply in Support of Writ of Restitution (CP 159-161), and Affidavit of Steven W. Davies in Support of Plaintiffs' Reply in Support of Writ of Restitution (CP 722-809). At the show cause hearing, the Commissioner allowed extensive argument by both counsel. The Commissioner ruled in granting plaintiffs' Motion for Writ of Restitution:

THE COURT: Okay. Thanks to both of you for your patience and obvious well thought out arguments on both sides. The unlawful detainer is to be a summary proceeding. Obviously this one hasn't been, but, that's my doings I think, more than anything else, wanting to make sure that I heard well and truly and full from each side here.

The simple things as I see them are: there was a foreclosure, notice was given of impending sale, the sale happened, the purchaser at that sale subsequently turned the property around and the Johnsons bought that property. At that time there was someone occupying the property that they bought; that they were not willing to allow that individual to remain there. I found Mr. Davies arguments regarding the reason why there was not quiet ti - - why quiet title action or ejectment, based upon the statute - - the sequence going from 61.24 to 59.12, and creating a remedy; I think if Mr. Burns, I don't want to put words per se in his mouth, had his druthers, there would be no remedy available to the Johnsons here based on the action. That makes no sense whatsoever. It's appropriate to try to reconcile the statutes to meet the legislative intent here. The legislative intent, first of all, look at the unlawful de - - or the quiet title. It's nonjudicial, it provides for due process, notice, it provides for a mechanism for a current I'll call them occupant, or the individual who is allegedly in arrears to stay that proceeding and when that action isn't taken, a subsequent purchaser at the sale is entitled to a clean ownership and a clean possession of that property. Anything, Albice to the contrary. I think Albice is obviously a case that has numerous equities and I don't find those equities present here, and find that Albice, other than, as counsel pointed out, the 120 day rule, and the failure to comply with that, which there's been no citing in this case that otherwise the parties didn't cross all the Ts and dot all the Is for purposes of that trustee's sale. If there is a error, there is a mistake. Mr. Sorrel's remedy is not the return of possession of the property, but to sue for damages. That's the 2009 amendment or just common sense at that time, saying yeah, we've moved on, people have taken a position of the property, based upon a process up to that point in time that had been followed, and therefore we are not going to leave the

Johnson or anybody else in their position out in the lurch, because of being bona fide purchasers from the original purchaser at trustee's sale. There's nothing to indicate that they had any of the knowledge that the attempted bona fide purchaser in *Albice*, and that was I think one of the things in, whether you want to call that dicta, since the 120 rule would've prevailed, they did - - went to substantial steps to outline the actions that that subsequent purchaser took whether it was to try to negotiate originally with the possessors, et cetera, I don't see any record here that the Johnsons don't qualify there. There's substantial compliance whether it's the difference between the 59.18, and the 59.12, summons, there is no evidence that I have this was an improper trustee's sale to I'll call it purchaser number one, the Johnsons being purchasers number two. They are the purchasers at this time; they are entitled to possession of the property and I would otherwise grant them their writ of restitution; ...

CP 203 - 205.

The Order Granting Plaintiffs' Motion for Writ of Restitution (CP 162-163) was entered on May 27, 2014, requiring in part:

A writ of restitution be issued by the clerk of the above-entitled court, forthwith in the manner provided by law...restoring to plaintiff possession of said premises...(Lines 3-8)

Ordered - stayed for a period of ten (10) days for defendants to seek revision. (Lines 15-16)

Clearly, the defendants had ten days to seek revision of the Commissioner's ruling. If they failed to do so, the plaintiffs were entitled to have the Writ of Restitution issued and delivered to the sheriff.

2. Defendants' Motion for Stay of Writ of Restitution - June 18,

2014.

Despite the clear language in the Court's May 27, 2014 Order, the defendants took no action during the ten day stay period. Therefore, on the thirteenth day, the plaintiffs sent notice to the defendants at 11:43 a.m. that they would "have the Writ of Restitution issued and delivered to the Sheriff at 3:00 p.m. today (June 9th)." CP 230-235. No response of any kind was received from the defendants. As such, the Writ of Restitution was issued, delivered to the sheriff, and served. It was not until Thursday, June 12, 2014, sixteen days after the Motion for Writ of Restitution was granted, that plaintiffs' counsel received contact from defendants' counsel indicating that he planned to "stay the Writ of Restitution". As a result, the June 18, 2014 hearing was scheduled and the Honorable Ronald E. Culpepper presided over this matter. The parties submitted their respective pleadings (defendants - Motion for Stay of Writ of Restitution (CP 218-220), Declaration of Richard Sorrels in Support of Motion to Stay Writ of Restitution (CP 225-227), and Declaration of Patrice Clinton (CP 221-224); plaintiffs - Plaintiffs' Response to the Defendants' Motion for Stay of Writ of Restitution (CP 230-235), Affidavit of Steven W. Davies in Support of Plaintiffs' Response to Defendants' Motion for Stay of Writ of Restitution (CP 810-845), and Declaration of Steven W. Davies Regarding Attorney's Fees and Costs (CP 846-847).

Judge Culpepper denied the defendants' Motion for Stay of Writ of Restitution (CP 236-237) stating in part, along with counsel:

THE COURT: Well, Mr. Burns, I'm looking at the transcript and the order. It says, "A Writ of Restitution is issued forthwith." Isn't that the main thrust of what was

argued before the commissioner? He said, I'll stay this order, the issuance of the writ, for ten days. Mr. Davies said he went down on the 13th day, so nothing happened during the ten days. So what am I supposed to do?

6/18/14 RP 6-7.

THE COURT: I had another case involving Mr. Sorrels, the Honse case. I had another case involving Mr. Sorrels when I was a district court judge, which was over probably 12 years ago, involving his failure to comply with a number of orders to remove things, and my first few months here, February of 2003, I had a case that had been Judge Sebring's involving Mr. Sorrels. So I have some background with Mr. Sorrels. How long have you represented Mr. Sorrels?

MR. BURNS: Just recently.

THE COURT: Well, the reason I say that, and I'll be real straightforward, Mr. Burns, is Mr. Sorrels tends to drag his feet. Mr. Sorrels tends to say he will do things and then doesn't do them. Mr. Sorrels tends to file appeals on everything. He tends to make motions to revise on everything. He tends to file Affidavits of Prejudice as a means to slow things down on everything. Mr. Sorrels is actually well known to Pierce County officials because of his obstreperous and rather odd view of the world, vociferous behavior, so delaying something for Mr. Sorrels to do something, it seems to be, is kind of an uphill battle.

MR BURNS: Well, it concerns me that you're already kind of pre-judging this case.

THE COURT: I'm not pre-judging this case. I'm trying to be honest with you to let you know what I know about Mr. Sorrels because I have had some history with Mr. Sorrels. And I noticed the pictures attached here. (CP 810-845) That's pretty consistent with Mr. Sorrels in the past.

6/18/14 RP 8 - 9.

THE COURT: Mr. Sorrels and the other defendants do have some rights under the Deed of Trust Act to contest a deed of trustee sale. Did they exercise those rights?

MR. BURNS: No...

...

THE COURT: Why do they say it's uninhabitable and dangerous?

MR. BURNS: Because the roof is open. I don't disagree with them at this point in time. It's uninhabitable and dangerous. Well, I don't know about dangerous.

THE COURT: Who's had possession of the building while it got to that state?

MR. BURNS: My client. ...

6/18/14 RP 11-14

THE COURT: The value of the personal property?

MR. DAVIES: That's what he says. He says it's very valuable. So I say: Come and get it. Give him three or five days, whatever it might take. But, come and get the stuff; come and take it.

Also, don't forget, he's under a permanent mandatory injunction on junk vehicles on that property issued in another Pierce County case.

THE COURT: On this property?

MR. DAVIES: 9316, and it's Richard Sorrels, and I've cited it in paragraph 6 of my brief. to not do exactly what he's doing here. So, to give them any more time, to me, is clearly inappropriate, but if you do - -

THE COURT: Can one man's junk be somebody else's antique road show?

MR DAVIES: Then great: come and get it then. Maybe the stay should be for a limited number of days to allow him to get it but also remove the vehicles. There's 14 junk vehicles on this property. He needs to remove the vehicles and the property.

6/18/14 RP 21-22.

THE COURT: Well, I'm going to deny the motion. No one is going to have to post the bond. I'm going to deny the motion to stay the writ, to add an additional stay on the writ.

Just so you know, Mr. Burns, this is in part because I do have some history with Mr. Sorrels. The case mentioned in 1997 was still pending around in 2003 when I took over from Judge Sebring. I know Judge Sebring had many issues with Mr. Sorrels complying with a lot of court orders issued at that time.

Some of my history includes him not obeying court orders issued when I was in district court. We've had other cases with Mr. Sorrels where he, as I said because, exhibits delaying tactics, obstreperous behavior. That seems to be his history, and I don't know why he does this. He has some view of the world that's different than a lot of people. I don't know what it's all about.

6/18/14 RP 25-26.

3. Defendants' Motion for Revision - June 27, 2014.

The defendants next requested that the Honorable Judge Kathryn J. Nelson revise Commissioner Gregorich's May 27, 2014 Order. That hearing occurred on June 27, 2014. The defendants raised the same issues that were argued to both Commissioner Gregorich and Judge Culpepper - deed of trust procedure; unlawful detainer procedure; and the Summons used by the plaintiffs. The parties submitted their respective pleadings. The Court

“considered all arguments”, refused to quash the Writ of Restitution, refused to dismiss the case, and only indicated that the “summons needs to be fixed”.
6/27/14 RP 31. Judge Nelson ruled in part:

THE COURT: No, I did consider all the arguments, and the only one that I can grant a revision on is the summons. So if it comes before me again and the summons is correct, I’m going to rule the same way the commissioner did on all the other issues. But where we are procedurally is a little cloudy to me since this was a lot for me to prepare for as is. So if there isn’t something specific that’s given to me, I’m going to try to keep the status quo except for my ruling.

6/27/14 RP 33

An Order Granting Defendants’ Motion for Revision in relation to Summons only was entered on June 27, 2014. CP 347-348.

4. Plaintiffs’ Motion for Clarification on Plaintiffs’ Obligations on Execution of Writ - July 3, 2014.

The plaintiffs scheduled for hearing on July 3, 2014, their Motion for Clarification on Plaintiff’s Obligations on Execution of Writ. CP 306-311. At the hearing, the parties agreed and stipulated, in open court and in writing, to the entry of the Stipulated Order Clarifying Plaintiffs’ Obligations on Execution of Writ. CP 367-370. Both counsel signed and initialed the Order. As stated previously, this Stipulated Order settled this lawsuit and resolved all issues between the parties, including the issuance of the Writ of Restitution and defendants’ property.

Plaintiffs’ counsel represented to the Court, in part, the following:

MR. DAVIES: As the Court is well aware, I’ve been down this road with Mr. Sorrels on a separate matter, and

unfortunately, it appears that this case is going down the same path: A lot of hearings, a lot of motions, a lot of fees and costs, et cetera. And what my clients have agreed to do, hopefully, will resolve this.

We will agree to store Mr. Sorrels' personal property per statute.

We will also agree, and I think this should be a tremendous benefit to Mr. Sorrels - - our writ was extended for 20 days. I believe that takes it through July 18th. So we will forego the execution of that writ for an additional ten days from today, allow Mr. Sorrels to come in and get his stuff.

Now, the beauty of that, then, you know, there's no storage costs. There's no removal costs that Mr. Sorrels would otherwise be responsible for under the statute. If he then doesn't come forward by the 13th, then the writ will be executed on the 14th, still within our 20-day period, and his materials will be stored for the 30 days required by the statute. But the downside for Mr. Sorrels, then, then he has to pay for the storage costs to get his materials if he allows that to happen. I think this is a reasonable method to attempt to resolve this. All my clients want is this property. They don't want his stuff.

7/3/14 RP 3-4.

THE COURT: Okay. So we're back on the record in Johnson/Sorrels, 14-2-07793-4, and the parties have handed up a stipulated order.

(Pause in proceedings.)

THE COURT: Okay. I'll sign the order.

7/3/14 RP 5.

5. Defendants' Motion to (1) Set Aside July 3, 2014 Order; (2)

Quash Writ and (3) Dismiss Case - August 15, 2014.

The fifth and final hearing was the Defendants' Motion to (1) Set Aside July 3, 2014 Order; (2) Quash Writ and (3) Dismiss Case. CP 408-413. The parties submitted their respective pleadings and the Court entered an order denying the defendants' requested relief. CP 615-616. The Court ruled:

THE COURT: ...So I'm denying the motion that was brought by Mr. Sorrels against the Johnsons and I'm finding for the Johnson - -

8/15/14 RP 12.

... THE COURT: - - because they have not breached that stipulation in moving any personal property off.

8/15/14 RP 13.

III. ARGUMENT

A. The parties entered into a settlement in open court and entered a Stipulated Order settling this litigation. Therefore, all issues between the parties have been resolved.

The defendants last lived in the property in 2006. However, the defendants left personal property and junk vehicles on the property. The plaintiffs' predecessor in title completed a non-judicial foreclosure in May, 2013 and recorded a Trustee's Deed on May 6, 2013. Said Deed represented in part:

All legal requirements and provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in Chapter 61.24 RCW.

The plaintiffs acquired the property on December 26, 2013 by way of Special Warranty Deed. The plaintiffs paid \$136,801 for title to this property. The defendants continued to refuse to remove their belongings from the property.

Therefore, in order to gain possession of their property and realize the benefits from the property they purchased, pursuant to RCW 61.24.060, the plaintiffs commenced this action on April 11, 2014 - an unlawful detainer proceeding under RCW 59.12. CP 153-158, 159-161, 722-809. The only issue in the unlawful detainer proceeding was possession. See *Munden v Hazelrigg*, 105 Wn.2d 39, 711 P.2d 295 (1985).

As stated above, this unlawful detainer litigation involved five separate court hearings in front of a Commissioner and two Superior Court Judges. Thankfully, the parties settled this matter by Stipulated Court Order dated July 3, 2014. Said Order stated in part:

This order is being entered by agreement and shall constitute a settlement as to this litigation only.

CP 367-370.

A settlement agreement is a contract, strongly favored by the courts, and viewed with finality. Stipulated settlements are generally binding on the parties and will not be reviewed if they are made and assented to in open court, reduced to writing, and signed by the parties and/or their respective counsel. CR 2(a); RCW 2.44.010; *Condon v Condon*, 177 Wn.2d 150, 298 P.3d 86 (2013); *Tropzer v Vig*, 149 Wn.App. 594, 203 P.3d 1056 (2009); *Martin v Johnson*, 141 Wn.App. 611, 170 P.3d 1198 (2007). The trial court has limited discretion to relieve a party from a stipulated settlement agreement. A trial court's decision that a stipulation was entered will not be disturbed once the trial court has confirmed that the parties' and counsel understood the stipulation. *Jones v Jones*, 23 Wn.2d 657, 161 P.2d 890 (1945); *Baird v Baird*, 6 Wn.App. 587, 494 P.2d 1387 (1972). Principles and circumstances including injustice, fraud, misunderstanding, and mistake are

reasons to justify the court's relief from a stipulation. *Baird v Baird, supra*. However, none of the aforementioned principles or circumstances were present in this case and therefore, the stipulated settlement agreement was not disturbed. This was the correct conclusion that becomes even more clear based upon the Court transcript of July 3, 2014 (7/3/14 RP 4), wherein the Court indicated an understanding of the proposed settlement, defendants' counsel agreed to discuss the settlement terms with his clients (7/3/14 RP 5), the parties presented a Stipulated Order to the Court with signatures and initials (7/3/14 RP 5-6), and the Court agreed to sign it (7/3/14 RP 5-6).

In addition to the above, as further support for the lack of "injustice, fraud, misunderstanding, and mistake" in the preparation and entry of the stipulated settlement, on August 15, 2014 the defendants attempted to "set aside" the stipulated settlement agreement, quash the writ, and dismiss the case. CP 408-413. The Court summarily denied this motion (CP615-616), indicating in part:

THE COURT: ... So I'm denying the motion that was brought by Mr. Sorrels against the Johnsons and I'm finding for the Johnson - -

MR. DAVIES: Thank you.

THE COURT: - - because they have not breached the stipulation in moving any personal property off.

8/15/14 RP 12-13.

Clearly, based upon the foregoing and all matters argued to the trial court¹,

¹Additional matters argued to the Court by the plaintiffs in support of the stipulated settlement included: the facts and law cited by the defendants did not support rescission of the stipulated settlement agreement, quashing of the Writ of Restitution, and dismissal of the case, this unlawful detainer action had been settled and there was no good reason to rescind the parties' agreement and dismiss the action, the defendants were well

the stipulated settlement agreement was enforced. This litigation was settled on July 3, 2014 and all unlawful detainer, foreclosure, and summons issues between the parties were resolved.

B. The plaintiffs' summons complied with RCW 59.12.080.

Even if this litigation had not settled, plaintiffs' Summons substantially complied with RCW 59.12.080. The Commissioner ruled:

THE COURT: ...There's substantial compliance whether it's the difference between the 59.18, and the 59.12, summons...

CP 205.

RCW 59.12.080 contains the requirements for the summons to be used. A quick review of the summons used by the plaintiffs in this case indicates that notice was given and that all requirements were met. Even though plaintiffs' form may have been copied from RCW 59.18, all requirements of RCW 59.12.080 were complied with. CP 250-301. Therefore, plaintiffs' summons was not defective, it "substantially complied" with the statute, all service requirements were complied with, and all timing and manner requirements were followed. See *Truly v Heuft*, 138 Wn.App. 913, 158 P.3d 1276 (2007); *Sprincin v Sound Conditioning*, 84 Wn.App. 56, 925 P.2d 217 (1996)²; *Callison*, 44 Wash 202 (1906); *Christensen v.*

aware of both the location and identity of their personal property; irrespective of this Motion and the defendants' actions, the defendants still had the right to retrieve their property, the defendants continue to violate the 1997 permanent mandatory injunction, and defendants failed to take any action after receipt of the Junk Vehicle Affidavits, and, the plaintiffs had no knowledge that the junk vehicles were being crushed. Said additional matters were supported by affidavits (CP 425-432, 433-477, 478-607)

²The Court in *Sprincin*, citing *Callison*, held that "A summons is adequate when it substantially complies with the statutory requirements " 84 Wn.App. 56, 61.

Elsworth, 162 Wn.2d 365, 173 P.3d 220 (2007)³.

As in this case, *Sprincin* dealt with an unlawful detainer action and RCW 59.12. The Court stated at 61:

Yet a summons confers jurisdiction upon the court when it gives notice according to the statutory requirements, with such particularity and certainty as not to deceive or mislead. Put another way, a summons is adequate when it substantially complies with the statutory requirements.

As stated above, plaintiffs' summons is not defective in that all service and timing requirements were followed, it did not "deceive or mislead", and it "substantially complied" with RCW 59.12.

It is true that Judge Nelson as part of the defendants' Motion for Revision (CP 165-212), required that the plaintiffs' Summons be "fixed". 6/27/14 RP 31. However, at the same time, properly, Judge Nelson decided that the case should not be dismissed (6/27/14 RP 33), refused to quash the Writ, and allowed the plaintiffs to "remedy and use the summons required by RCW 59.12". CP 347-348. Instead of "fixing" the summons, the parties settled the litigation by stipulated agreement dated July 3, 2104 (CP 367-370), thereby resolving all foreclosure and unlawful detainer issues, including possession of the property and plaintiffs' Summons.

C. The Commissioner correctly granted plaintiffs' Motion for Writ of Restitution.

1. The Commissioner ordered that plaintiffs' Writ of Restitution be stayed for 10 days so the defendants could seek revision. CP 347-348.

The Commissioner's action in staying plaintiffs' Writ of Restitution was done at defendants' request and was objected to by the plaintiffs.

³CP 199.

Nevertheless, the Commissioner ordered the 10 day stay. At the same time, however, plaintiffs' Writ of Restitution was "issued...forthwith". Further, the Commissioner was very clear that if the defendants were going to seek revision, both the filing of the motion and the hearing had to be completed within 10 days. The Court and defendants' counsel stated in part:

MR. BURNS: Can I be a little more clear? I'd like you to stay it until a motion for revision is heard; the stay goes away if I don't file it within the 10 days, 'cause I have to. You know? I don't know what the department's calendar is.

...

THE COURT: No, I'm just going to make it 10 days and then if you want that department to whom it's assigned, to go beyond that, 'cause here - - here's what I see. And nothing personal to you, Mr. Burns, unfortunately is if I order it like that and all of a sudden this thing keeps rolling over, continuance after continuance, you're stayed for months on end and that would not be my intention. So we'll - - I'll give you a stay for 10 days to file a revision and seek further stays from the assigned department. And whether that's on - - a motion on - - to waive notice or shorten time; something like that, that - - that puts - - since I've ruled in favor of Mr. Davies, I think then, that puts the monkey directly on your back, that you need to move things quickly if you're going to take advantage of the options you have available to you.

MR. BURNS: Yeah.

CP 210-211

The defendants filed their Motion for Revision on June 6th, with the hearing scheduled for June 20, 2014.⁴ CP 165-212. There was no order shortening

⁴Defendants' Motion for Revision was continued and was not actually heard until June 27, 2014.

time and absolutely no action taken by the defendants relative to continuing the Commissioner's 10 day stay. Therefore, on June 9, 2014, after notice to the defendants, 13 days after the May 27th hearing and 3 days after the Commissioner's 10 day stay expired, the plaintiffs' Writ of Restitution was issued by the Clerk and delivered to the Sheriff of Pierce County for service. CP 215.

The defendants' Motion for Revision, pursuant to the title of their pleading, was based upon PCLR 7(a)(11). Under subsection A of that rule, the defendants could have obtained an order shortening time - but failed to do so; and under Subsection B, it states that all orders granted by the Commissioner "shall remain valid and in effect pending the outcome of the motion for revision". The defendants completely ignored the clear and distinct order made by the Commissioner on May 27, 2014, that both the filing and hearing must occur within ten days, and/or some sort of order shortening time must be entered, and/or the assigned department must order an additional stay. Therefore, the entry of the Writ by the plaintiffs and the entirety of the unlawful detainer proceeding, including the summons used, were in conformance with the Commissioner's order and were "valid and in effect" pursuant to PCLR 7(a)(11)(B).

In addition to the above and probably most importantly, the defendants did not seek revision or object to the 10 day stay ruling made by the Commissioner. Therefore, the Order entered on May 27, 2014 as it relates to the 10 day stay, was the "order and judgment of the Superior Court". See RCW 2.24.050; *Robertson v Robertson*, 113 Wn.App. 711, 54 P.3d 708 (2002). Further, plaintiffs' Writ of Restitution and the 10 day stay

were ordered “issued by the Clerk...forthwith, in the manner provided by law...” In other words, plaintiffs’ Writ of Restitution was issued and then, over plaintiffs’ objection, stayed only for 10 days. Upon expiration of the 10 day stay, combined with no action by the defendants, the issued and delivered Writ was the “Order ...of the Superior Court”.

Due to the defendants’ failure to comply with the Court’s Order, the defendants waived any opportunity to object and seek revision of the Commissioner’s May 27th Order. Said waiver by the defendants included objections to the summons used by plaintiffs, any other unlawful detainer issues, and all trustee sale issues. The defendants, despite the Court’s Order and subsequent notice from the plaintiffs, completely ignored the Court’s 10 day stay. Nevertheless, even though the Commissioner’s 10 day stay had expired, on Wednesday, June 18, 2014, the defendants desperately attempted to impose an additional stay of plaintiffs’ Writ of Restitution. The defendants noted a “Motion for Stay of Writ of Restitution”. The plaintiffs objected. After review of pleadings and argument, the Honorable Judge Ronald Culpepper properly denied defendants’ request to stay plaintiffs’ Writ of Restitution. CP 236-237. Accordingly, the issued Writ remained the “Order ...of the Superior Court”.

2. All defenses raised by the defendants have been waived pursuant to RCW 61.24.130.

Curiously, the defendants do not even address that any defenses claimed have been waived and that they are limited to a separate action only for damages. Instead, the defendants argue that RCW 61.24.130 should somehow be expanded in this case to allow the defendants to raise defenses

after a properly completed trustee's sale.⁵ If you take this argument to its illogical end, no trustee's sale would ever be final. The defendants' argument has no merit and is contrary to Washington law.

All arguments raised by the defendants alleging defects in the trustee sale procedure and any other defenses related to the real property have been waived. In fact, RCW 61.24.130 specifically prohibits all claims raised by the defendants in this proceeding. Washington's Deed of Trust Act sets out the procedures that must be followed to properly foreclose a debt secured by a deed of trust. Chapter 61.24 RCW. A proper foreclosure action extinguishes the debt and transfers title to the property to the beneficiary of the deed of trust or to the successful bidder at a public foreclosure sale. *Albice v. Premier Mortgage Services of Washington, Inc.*, 157 Wn.App. 912, 239 P.3d 1148 (2010). RCW 61.24.130 provides a procedure by which an individual or an entity may restrain a trustee's sale on any proper ground. Said statutory section states in part:

(1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper legal or equitable ground, a trustee's sale....

The aforementioned statutory procedure is the only means by which a party may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure. *Brown v Household Realty Corporation*, 146 Wn.App. 157, 189 P.3d 233 (2008). A party's failure to take advantage of the pre-sale

⁵The defendants continue to improperly suggest that an illegal subdivision occurred sometime prior to the sale to the plaintiffs. Appellants' Brief, Page 6. This is without merit having been decided in the following proceeding: Pierce County Superior Court Cause Nos. 02-2-12517-0 - Gage v Sorriels, et al. Res judicata principles apply

remedies under the Deed of Trust Act results in waiver of their right to object to the procedures involved in a trustee's sale where the party (1) received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale. *Frizzell v. Murray*, 179 Wn.2d 301(2013); *Gossen v. JPMorgan Chase Bank*, 819 F.Supp 2d 1162 (W.D.Wash.2011); *Brown v. Household Realty Corporation, supra*. Further, a party waives the right to contest underlying obligations on the property and all claims related to the real property where there is no attempt to employ the statutory pre-sale remedies. *Rucker v. Novastar Mortgage, Inc.*, 177 Wn.App. 1 (2013); *Brown v. Household Realty Corporation, supra*; *CHD, Inc v. Boyles*, 138 Wn.App. 131, 157 P.3d 415 (2007). The application of the waiver doctrine to objections to procedures involved in the trustee's sale and to any and all additional claims related to the real property and arising out of underlying obligations, furthers the three goals of the Deed of Trust Act: (1) that the non-judicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles. *Brown v. Household Realty Corporation, supra*

The Washington Supreme Court recently discussed and decided the issue of waiver in *Frizzell v. Murray, supra*. The Court held that the plaintiff Frizzell, in failing to invoke presale remedies, waived her right to invalidate the trustee foreclosure sale. The Court reached this conclusion finding that Frizzell had notice of the sale (as did the defendants in this case), had actual

or constructive knowledge of a defense to the foreclosure (as did the defendants in this case), but failed to invoke any presale remedies (as the defendants failed to do in this case). The Court reached this conclusion even though Frizzell filed a complaint alleging fraud and other theories and before the sale, filed a motion to enjoin the sale and paid \$15,000 into the Court registry. However, Frizzell failed (as did the defendants in this case) to obtain an order enjoining the trustee's sale. Accordingly, the Court concluded that Frizzell waived her claims to invalidate the trustee's sale.

The Court in *Frizzell* also addressed arguments that it would be inequitable to apply the waiver provision. The Court stated at 309:

...Frizzell failed to comply with the conditions necessary to enjoin the sale....It is not inequitable to conclude that Frizzell waived her sale claims where she had knowledge of how to enjoin the sale and failed to do so through her own actions.

Therefore, since the defendants in this case failed to act, consistent with the holding in *Frizzell* and additional Washington law, it is not inequitable to apply the waiver provision. Further, in this case, the defendants have offered no evidence that they have claimed or attempted to invalidate the trustee's sale and in addition, despite proper notice, failed to invoke any of the pre-sale remedies mandated by RCW 61.24. The Trustee's Deed recorded by the plaintiffs' predecessor in title specifically represented that all procedures required by law were followed and complied with. CP 129-152. Therefore, the defendants waived any right to contest any and all procedures involved in the trustee's sale and waived all claims related to the real property.

In addition to the above, the Deed of Trust Act was amended in 2009 to permit claims for money damages only after a foreclosure sale based upon: (1) fraud or misrepresentation, and (2) claims under RCW 19. Said statute

specifically limits plaintiff's damages to "actual damages" (61.24.127(2)(f)) and expressly prohibits quiet title and ejectment actions (61.24.127(2)(b)). Said statute prohibits the filing/recording of a lis pendens (61.24.127(2)(d)) and most importantly, prohibits the plaintiff from contesting the validity or finality of the foreclosure sale (61.24.127(2)(c)) or in any way encumbering or clouding the title to the property (61.24.127(2)(c)). Therefore, under no circumstances, can the defendants after failing to invoke pre-trustee's sale remedies, request anything other than "actual damages", contest the validity or finality of the foreclosure sale or any subsequent transfer, or in any way encumber or cloud title to the subject property.

Based upon the foregoing, the "summary proceedings to obtain possession of the real property" commenced by the plaintiffs under RCW 59.12 were appropriate and therefore, the Commissioner was correct in granting plaintiffs' Writ of Restitution:

THE COURT: ...Mr. Sorrel's remedy is not the return of possession of the property, but to sue for damages. That's the 2009 amendment or just common sense ..., and therefore we are not going to leave the Johnson or anybody else in their position out in the lurch, because of being bona fide purchasers from the original purchaser at trustee's sale.

...

...there is no evidence that I have this was an improper trustee's sale ...They are the purchasers at this time; they are entitled to possession of the property and I would otherwise grant them their writ of restitution.

CP 204-205.

3. **The Writ of Restitution was properly granted to plaintiffs even though plaintiffs were subsequent purchasers at the foreclosure sale.**

RCW 61.24.060(1) states in part:

The purchaser at the trustee's sale shall be entitled to possession of the property on the 20th day following the sale, as against the borrower and grantor under the deed of trust...The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in Chapter 59.12 RCW.

The plaintiffs are entitled to the relief requested and possession of the property in accordance with RCW 61.24 and RCW 59.12.⁶ RCW 61.24 was designed by the Legislature to avoid costs and time-consuming judicial foreclosure proceedings. *People's National Bank v Ostrander*, 6 Wn.App. 28, 491 P.2d 1058 (1971). RCW 59.12 was designed to provide expeditious summary proceedings for the removal of persons in possession of the property of another. *Munden v Hazelrigg*, 105 Wn.2d 39, 711 P.2d 295 (1985). As held by the Court in *Savings Bank of Puget Sound v Mink*, 49 Wn.App. 204, 208, 741 P.2d 1043 (1987):

...[T]he Legislature intended to preserve the summary nature of foreclosure actions permitted under RCW 61.24 in referring purchasers to the unlawful detainer statutes for the removal of "reluctant" former owners...Application of RCW 59.12...to these proceedings will provide a remedy that is consistent with the spirit and intent of the Legislature in enacting RCW 61.24 and will do so without prejudice to the rights of the defaulting party.

See also *Excelsior Mortgage Equity Fund II v Schroeder*, 171 Wn.App. 333, 287 P.3d 21 (2012), review denied, 177 Wn.2d 1005 (2013).

It is undisputed that the plaintiffs purchased the property by way of

⁶In the Complaint for Unlawful Detainer/Eviction, the plaintiffs made the following statement: "Plaintiffs have no Landlord Tenant relationship with the defendants" Plaintiffs explained this statement to mean there was no lease agreement executed between the parties. Plaintiffs did not intend by this statement to suggest that RCW 61.24 and RCW 59.12 did not apply to this matter CP 159-162.

Special Warranty Deed from the purchaser at the trustee sale. It makes absolutely no sense to limit the proceedings allowed by RCW 61.24 to only the purchaser at the trustee's sale. Clearly, the stated policies mandated by RCW 61.24 and RCW 59.12 are "summary proceedings to obtain possession of the real property" and the "removal of reluctant former owners". The emphasis is on delivering possession to the rightful owner and removing summarily "reluctant former owners". Further, such a procedure, consistent with the holding in *Savings Bank of Puget Sound v Mink, supra*, does not result in prejudice to the defaulting party. Therefore, there is no good reason to limit RCW 61.24 procedures to only purchasers at the trustee's sale.

There are no Washington cases on point concerning the issue of subsequent purchasers at a foreclosure sale. However, California has dealt with this identical situation in *Evans v Superior Court*, 67 Cal. App. 3d 162, 136 Cal. Rptr. 596 (1977). In *Evans*, the Court held that a subsequent purchaser from a purchaser at a foreclosure sale was entitled to bring an unlawful detainer action in that the policy of the statute to provide summary proceedings would not be served by restricting an unlawful detainer action only to the original purchaser.

In this case, the reasoning applied by the Court in *Evans* and in the Washington cases cited above should also be applied to this situation. The ultimate goal is delivery of the property to the rightful owners (the plaintiffs) and removal of "reluctant former owners", like the defendants. The plaintiffs commenced the "summary proceedings" authorized by RCW 61.24 and therefore, as correctly ruled by the Commissioner, the plaintiffs are entitled to possession of the property and their Writ of Restitution.

The Commissioner, on May 27, 2014, allowed counsel for plaintiffs and defendants to argue their respective positions. Contrary to the defendants' arguments, the Commissioner did not "abdicate [his] responsibility" or "ignore the plain language of RCW 61.24". Instead, consistent with the Washington cases *People National Bank v Ostrander* and *Savings Bank of Puget Sound v Mink*, and the California Case *Evans v Superior Court*, the Commissioner found it was the Legislature's intent to preserve the summary nature of foreclosure actions and unlawful detainer actions; that to allow the plaintiffs in this case to proceed with the mandated action pursuant to RCW 61.24 and RCW 59.12 was "consistent with the spirit and intent of the Legislature in enacting RCW 61.24 and will do so without prejudice to the rights of the defaulting party". *Mink* at 208. The Commissioner noted, consistent with Washington law, that "It's appropriate to try to reconcile the statutes to meet the legislative intent here"⁷ and went on to rule:

THE COURT: ...The unlawful detainer is to be a summary proceeding. ...

The simple things as I see them are: there was a foreclosure, notice was given of impending sale, the sale happened, the purchaser at that sale subsequently turned the property around and the Johnsons bought that property. At that time there was someone occupying the property that they bought; that they were not willing to allow that individual to remain there.

...

...If there is a error, there is a mistake, Mr. Sorrel's remedy is not the return of possession of the property, but to sue for damages. That's the 2009 amendment or just common sense...

⁷CP 203

...

...They [the plaintiffs] are the purchasers at this time; they are entitled to possession of the property and I would otherwise grant them their writ of restitution;...

CP 204-205.

Clearly, the Commissioner did not err in allowing the plaintiffs to enforce their rights under RCW 61.24 and RCW 59.12.

4. The defendants continue to violate the 1997 permanent mandatory injunction. Further, the defendants failed to take any action after receipt of the Junk Vehicle Affidavits.

The defendants left fourteen junk vehicles, plus a tent trailer, on the plaintiffs' property. This was in direct violation of the permanent mandatory injunction entered in Pierce County Cause No. 97-2-07841-1.⁸ Pierce County required the removal of these vehicles and worked with the plaintiffs to accomplish this in accordance with statutory requirements.⁹ This was especially important to the plaintiffs in that RCW 7.48.170 mandates "successive owners liable" if they fail to "abate a continuing nuisance...caused by a former owner." As part of the process to "abate a continuing nuisance", the plaintiffs worked with Mark Luppino, Code Enforcement Officer, Pierce County Public Works and Utilities, Pierce County Responds Program, and forwarded Junk Vehicle Affidavits to the

⁸See Transcript of Proceedings October 26, 2001 and October 29, 2001 and Order and Judgment on Trial dated November 27, 2002. CP 490-519.

⁹See RCW 46.55.010 and RCW 46.55.230; see also RCW 7.48.170.

registered/legal owners of the vehicles.¹⁰ RCW 46.55.230 mandates in part:

(1)(a) ...any person authorized by the director shall inspect and may authorize the disposal of an abandoned junk vehicle. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the parts.

...
(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners shown on the records of the department.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.

...

(6) It is a gross misdemeanor for a person to abandon a junk vehicle on property....cleanup restitution payment...

(7) For the purpose of this section, the term "landowner" includes a legal owner of private property....

(8) A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance.

The plaintiffs, in good faith, followed and completed the procedures of Pierce County and RCW 46.55.230.¹¹ None of the defendants were legal owners of

¹⁰See Junk Vehicle Affidavits, CP 443-474

¹¹Junk Vehicle Affidavits sent certified mail on April 17, 2014, CP 443-474.

any of the junk vehicles and were listed as registered owners on only five.¹² None of the defendants took any action subsequent to receipt of the Junk Vehicle Affidavits to protect whatever ownership interest they might claim.¹³ As a result, by statute, the plaintiffs were free to dispose of the vehicles, the plaintiffs were “immune from any liability”, and the defendants had no further claims to them.¹⁴ As stated to the plaintiffs by Mark Luppino, Code Enforcement Officer:

The purpose for a Junk Vehicle Affidavit, is to allow you, the property owner, to notify by mail the last registered or legal owner(s) regarding a vehicle(s) left behind or abandoned on your property. As long as you followed the directions on the back of the JVA forms I provided you, there should be no problem for removing said vehicles from your property.

In addition to the above, Mark Luppino, Code Enforcement Officer for Pierce County Public Works and Utilities, did an independent investigation of the fourteen vehicles and determined that a number of the vehicles were not in the name of the defendants or entities that the defendants were associated with and/or control.¹⁵ Further, the defendants’ junk vehicles were in direct violation of Pierce County v Richard E. Sorrels, et al, Pierce County Cause No. 97-2-07841-1¹⁶, wherein “each defendant [including

¹²See correspondence from Steven W. Davies to Martin Burns dated July 17, 2014. CP 601-602.

¹³See email correspondence dated July 16, 2014, 8.30 a.m. and July 16, 2014, 5.42 p.m. (CP 440-441).

¹⁴May 3, 2014. See RCW 46.55.230(4). RCW 46.55.230(8), CP 443-474.

¹⁵See Mr. Luppino’s February 20, 2014 (CP 835), and February 26, 2014 (CP 837) emails.

¹⁶See Order and Judgment on Trial. CP 839-845

Richard Sorrels] is permanently enjoined from bringing or storing upon any of the subject parcels [including 9316 Glencove Road, Pierce County, Washington] any man-made object outside legally constructed and permitted buildings. The injunction is also a permanent mandatory injunction directing the defendants to remove all man-made objects outside legally constructed and permitted buildings. This injunction includes vehicles. Any vehicles which come upon the property must be in street-legal operating condition, bear valid and current licensing and have valid and current proof of insurance from a properly licensed insurance company doing business in the State of Washington”.

Further, the defendant Sorrels was present when the plaintiffs’ property was inspected by Mark Luppino, Code Enforcement Officer, and, as to the junk vehicles, at least some of the defendants witnessed the vehicles being towed. CP 414-424. Nevertheless, the defendants took no action upon receipt of the Junk Vehicle Affidavits. In fact, the defendant Patrice Clinton states in her declaration (CP 414-424):

I currently reside on a property nearby (90 feet away) and can observe the subject property directly from my residence. At approximately 9:30 a.m. on July 27, 2014,¹⁷ the Johnsons and a tow truck arrived at the subject property. The Johnsons, through the tow truck operator, removed 12 vehicles from the subject property. The tow truck passed 15 feet from where I was standing, as each vehicle was removed. Given the Sheriff had not yet executed the writ, I was troubled as I believe the Johnsons had no right to enter, possess, or take any such action.

Clearly, the plaintiffs had every right to tow the junk vehicles from their

¹⁷The defendant has incorrectly stated “July 27, 2014” in CP 414-424. She obviously intended to state “June 27, 2014” in that she references the Court “hearing...while I was observing Johnsons removing the vehicles”. The hearing occurred on June 27th. No hearing occurred on July 27th.

property and obviously, the defendants had knowledge of the identity and ultimate location of the same junk vehicles.

The defendants have “played this game” long enough. The defendants and entities they control have been involved in a number of Pierce County Superior Court actions (CP 230-235)¹⁸, all with the same goal of ignoring Court orders and frustrating the owners of the property with continued frivolous actions. Clearly, no court erred in granting plaintiff’s relief.

5. Contrary to defendants’ assertions, neither ejectment nor quiet title are proper causes of action.

Neither ejectment nor quiet title are proper causes of action in this case. Both ejectment and quiet title actions are codified in RCW 7.28. Both actions require a “valid subsisting interest in real property, and a right to the possession thereof”. RCW 7.28.010. Ejectment is typically brought if the defendant is occupying the disputed property; quiet title is brought when the defendant is not occupying the property. Both actions require a good faith, honest claim of title and they are intended to resolve competing claims of ownership. *Washington Securities and Investment Corp v Horse Heaven Heights, Inc.*, 132 Wn.App. 188, 130 P.3d 880 (2006); *Kobza v Tripp*, 105 Wn.App. 90, 18 P.3d 621 (2001).

The defendants argue that the plaintiff’s proper remedy is ejectment. This is absolutely false. The defendants do not have and cannot argue “a valid subsisting interest in real property, and a right to possession thereof”.

¹⁸See Pierce County Superior Court Cause Nos 02-2-12517-0 - Gage v Sorrels, et al, Cause No. 13-2-13277-5 - Honse v Clinton, et al; and Cause No. 13-2-09134-3- Glencove, LLC v Macfarlane, et al. CP 230-235.

The defendants cannot claim ownership in that they allowed the foreclosure, pursuant to RCW 61.24, to be completed. The trustee's sale was final and the defendants have no ownership interest rights. Further, even if the defendants had ownership rights, they are specifically prohibited from quiet title and/or ejectment actions by RCW 61.24.127. If the defendants have any cause of action at all, consistent with Washington law and the Commissioner's ruling, it is "to sue for damages" pursuant to RCW 61.24.127.

6. The Commissioner's ruling of "zero on the bond" is the order of the Superior Court.

The Commissioner ordered that plaintiffs' Writ of Restitution should be subject to no bond. CP 162-163. This was done at the plaintiffs' request and was due to the property's deplorable condition. The Court ordered in part:

MR. DAVIES: *the only thing I asked was that the bond, if any, be zero. From the sheriff. That the value of the property is - - is nothing.*

CP 208

...

THE COURT: I would find it reasonable to set it at zero, based upon the observations.

CP 209

...

THE COURT: Zero on the bond.

MR. DAVIES: Thank you.

CP 210.

The defendants did not object to this part of the order. Therefore, the Commissioner's order of "zero on the bond" should be the order of the Superior Court pursuant to RCW 2.24.050.

In addition to the above, the Commissioner characterized the subject property as “pigsty”. CP 179. Despite this, the defendants continue to take the position that there is “an enormous amount of valuable personal property” onsite. Even assuming this to be true, the defendants’ representations as to “valuable personal property” but their continued failure to retrieve their property, are not consistent. On a number of occasions in open court, the plaintiffs offered to the defendants to come and get their property. 6/18/14 RP 21, 22; 6/27/14 RP 16. The defendants refused repeatedly. Further, subsequent to the issuance of the Writ of Restitution but before any other hearings, the defendants were “encouraged” to come to the property and retrieve all items. The defendants refused. CP 230-235. Before the July 3, 2014 hearing date, the offer was again made to the defendants to retrieve their property. The defendants refused. After the hearings on both June 27th and July 3rd, the defendants were advised that their personal property was at the subject real property¹⁹. The July 3rd Order allowed the defendants to retrieve their items free of charge for thirty days. The defendants did virtually nothing. CP 367-370. Despite having every opportunity to gain possession of what they argue is “valuable personal property”, the defendants chose not to retrieve it. Therefore, the defendants should be held accountable for their continued decisions not to retrieve the property.

D. The plaintiffs are entitled to an award of reasonable attorney’s fees and costs.

¹⁹See correspondence from Steven W. Davies to Martin Burns dated July 17, 2014(CP 478-607); see email correspondence dated July 16, 2014, 10:31 a.m. and August 5, 2014, 11:16 a.m. (CP 433-477); when the Writ of Restitution is executed upon, RCW 59.18.312 allows the personal property to continue to be stored “in any reasonably secure place, including the premises...” The plaintiffs intend to do this.

The defendants' claims are frivolous and without merit pursuant to RCW 4.84.185 and RAP 18.9. The defendants presented no legally debatable issues or legitimate arguments for an extension of the law. Therefore, the plaintiffs should be awarded reasonable attorney's fees and costs. RAP 18.9(a).

III. CONCLUSION

The trial court did not err in granting the relief requested by the plaintiffs. The defendants are well versed in "playing the games" associated with foreclosure, unlawful detainer, and refusing to comply with court orders and Washington law. The defendants' continued efforts against the plaintiffs in this case are without merit. The plaintiffs, in good faith, spent \$136,801 to purchase this property, incurred a significant amount of attorney's fees and costs, and all they ever wanted was their property, free of the defendants' personal property.

This litigation was settled by stipulation and order between the parties. Possession of the property is properly in the plaintiffs. Accordingly, the trial court's decision should be affirmed and the plaintiffs should be awarded reasonable attorney's fees and costs.

DATED this 14th day of April, 2015.

COMFORT, DAVIES & SMITH, P.S.

By: 
Steven W. Davies, WSBA #11566
of attorneys for Respondents

