

**FILED**

FEB 21 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**No. 290506**

**No. 290514**

**COURT OF APPEALS DIVISION III  
OF STATE OF WASHINGTON**

**STEVEN M. HEEB, an individual,**

**Appellant,**

**v.**

**CARL N. WARRING, and WARRING  
LAW FIRM, P.S., a professional services  
corporation,**

**Respondents.**

**COURT OF APPEALS NO.  
290506 and  
290514**

**RESPONSIVE BRIEF**

**STEVEN M. HEEB, an individual,**

**Appellant,**

**v.**

**MARY OTEY,**

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I. Identity of the Moving Parties.

a. Respondents.

The Respondents are Carl N. Warring and the Warring Law Firm, P. S. and Mary Otey (a former employee of the Warring Law Firm, P.S.), were the Defendants in the trial court. The Respondents will be referred to as Defendants or as Carl Warring or Mary Otey.

b. Appellant.

The Appellant, Steven Heeb, was the Plaintiff in the trial court and filed an appeal on the 10<sup>th</sup> day of May 2010. He filed his appellant brief on or about November 26, 2012. The Appellant will be referred to as Mr. Heeb.

II. Appellants Assignment of Errors.

Mr. Heeb's assignments of error are ambiguous descriptions of the faults he perceives in how the trial court handled the procedures and in particular how the summary judgment motion was handled. He asserts the Court did not provide him the same amount of uninterrupted time to present his arguments, complaints about the order in which the parties presented argument and the extent, if any, of rebuttal and sur-rebuttal argument. Mr. Heeb's brief for most of the first two pages express dissatisfaction with the process as assignments of errors. What actually occurred is contained in the transcript supplied by Mr. Heeb. (Tr. 9-18). Mr. Heeb's procedural complaints are not well taken and are not actual assignments of error.

There are perhaps three issues Mr. Heeb raises in his brief, which could be construed to be assignments of error and one request for the Court of Appeals to review all of the documents filed in Adams County Cause No. 09-02-00103-4 and identify any errors the trial court might have committed. The three issues he seems to identify are: (1) references to the Order of Dismissal of Judge Fraizer without prejudice in Adams County Cause No. 04-2-00059-2 (CP 149); (2) assertions that the attorney fees awarded in Adams County Cause No. 01-2-00153-5 were higher than the amount he agreed to pay; and (3) payment of the redemption price for his property sold at an execution sale in Adams County Cause No. 01-2-00153-5. I have addressed issues raised on the summary judgment motion, which includes the three items identified in this paragraph.

III. Statement Of The Case.

1. Procedural Facts.

- a. On April 30, 2009, the Mr. Heeb filed a 60-page unverified Complaint, including exhibits, against Carl N. Warring and Mary Otey asserting claims for Attorney Misconduct and Grand Theft of Client's Property. CP 1-60.
- b. On December 23, 2009, the Defendants filed their Answer To The Complaint And Cross-claim. CP 68.
- c. On December 23, 2009, the Defendants filed a Motion For Summary Judgment. CP 206-207.

d. On December 23, 2009, the Defendants filed a Memorandum In Support Of Motion For Summary Judgment. CP 196-205.

e. On June 25, 2010, the Order Granting Summary Judgment was entered dismissing all of Mr. Heeb's claims on the basis of res judicata and/or claim preclusion and on the basis they were barred by the Statute of Limitations and all the claims were dismissed. CP 367-368.

f. Mr. Heeb filed a Notice of Appeal on May 10, 2010. CP 354.

2. Statement of Facts.

a. The Defendants were retained by Mr. Heeb in August of 1999 to represent him in a District Court cause of action wherein Adams County, State of Washington, had charged him with permitting the occupancy of two homes without first securing an occupancy permit. CP 77, 168-170.

b. The Defendants were also retained by Mr. Heeb in November of 1999 to represent him in a cause of action involving the dissolution of his marriage and a division of the community and separate property. CP 77.

c. Additionally, the Defendants were retained by Mr. Heeb to handle various other matters for him between August of 1999 and July 26, 2001. CP 77.

d. During the period of representation, Mr. Heeb received monthly statements stating the amount of attorney's fees that were being incurred each month for the services rendered to date on each of the matters handled by the Defendants. Mr. Heeb failed or refused to open the monthly statements as they

were received. CP 78. Mr. Heeb admitted receiving the monthly statements and admitted he did not open the statements so he did not know the amount of fees he was incurring month-to-month. CP 78.

e. After trial of the dissolution and after entry of the Findings of Fact, Conclusions of Law and Decree of Dissolution, Mr. Heeb stated he would not pay the amount of the attorney's fees that had been billed. Upon refusal to pay the attorney's fees that had been incurred over a long period of time, Carl N. Warring withdrew as counsel of record for Mr. Heeb. CP 78, 172-176.

f. There were some deeds and a qualified domestic relation order work to complete the transfers of the property awarded to the two parties. However, as the Defendants were no longer his attorney of record, they had no duty to complete that work. CP 78.

g. Mr. Heeb continued to refuse to pay the fees billed by the Defendants. CP 78.

h. A cause of action was brought against Mr. Heeb in Adams County Superior Court, State of Washington under Cause No. 01-2-00153-5 for breach of contract for non-payment of fees. CP 78, 89-93, 98-103.

i. During the pendency of the 01-2-00153-5 cause of action, Mr. Heeb made no requests for discovery from the Defendants. CP 78.

j. Cause No. 01-2-00153-5, the claim involving the attorney fees, was resolved after a non-jury trial. Various issues raised by Mr. Heeb regarding the

work performed, the amount of time expended, and whether or not the work had been requested were mostly resolved against Mr. Heeb in the judgment entered in that cause. CP 78-79, 110-111.

k. Mr. Heeb continued to refuse to pay the judgment awarded by the Superior Court. CP 122. The Defendants had asserted an attorney's possessory lien over Mr. Heeb's papers he had left with the Defendants as authorized by RCW 60.40.010(a). CP 79. Mr. Heeb had filed a motion for the return of the papers and documents left with the Defendants. CP 109. The motion was not noted for a hearing and therefore was not considered or decided by the Court.

l. Mr. Heeb filed a series of appeals and motions in the Appellate Court and Supreme Court regarding the judgment and subsequent execution sale of real property owned by Mr. Heeb. CP 163. These appeals were dismissed because they were untimely. The trial court's judgment then became final. CP 79.

m. On March 4, 2004, in Adams County Cause No. 01-2-00153-5, Mr. Heeb filed a motion to Vacate the Findings of Fact and the Judgment. CP 115-120, 126-131.

n. On March 17, 2004, in Adams County Cause No. 01-2-00153-5, the Order On Defendant's Motion To Vacate Findings Of Fact And Conclusions Of Law And Plaintiff's Motion For Terms was entered. CP 133-134.

o. On March 23, 2004, in Adams County Cause No. 01-2-00153-5, Mr. Heeb filed a second Motion For Order To Show Cause To Vacate Judgment and to

Vacate the Writ of Execution. On April 19, 2004, an Order To Show Cause to Vacate Judgment and to Vacate the Sheriff's Notice of Execution Sale was entered. CP 136-137.

p. On May 17, 2004 the Order on Defendant's Motion To Vacate Judgment/Order and Plaintiffs' Motion To Strike And For Terms was entered. CP 139-140.

q. All of these motions were denied. CP 133-134, 139-140.

r. An execution sale was conducted on April 30, 2004 by the Adams County Sheriff on the Writ of Execution requested by the Defendant. CP 142; CP 122-124.

s. On June 7, 2004, an Order of Confirmation Of Sale was entered by Superior Court. CP 142-144.

t. The papers and files being held on an attorney's lien were returned to Mr. Heeb on July 16, 2004, shortly after the Order of Confirmation of Sale was entered. CP 19-20, 158, 161, 164, 180-187.

u. Mr. Heeb failed to redeem the property. CP 263. He has claimed the Adams County Sheriff improperly refused a tender for redemption, but omits the crucial fact that the tender was in an insufficient amount. Mr. Heeb failed to notify the Sheriff in writing five days in advance of the intent to redeem as required by RCW 6.23.080(1) and failed to secure the correct amount to tender for redemption from the Adams County Sheriff. He failed to tender the correct

amount of interest on the judgment and failed to tender the costs and expenses associated with the execution sale. CP 80. He did not timely file any motions or requests for relief from the execution sale. CP 79-80.

v. On May 5, 2005, the Sheriff of Adams County issued the sheriff's deed to Carl N. Warring, the sole bidder at the execution sale. CP 189.

w. The property purchased at the Sheriff's sale was subsequently sold to a Jose Angel Soledad. CP 166. The sale was an "as is" sale. The warranty deed contained a disclaimer of all warranties except that of title. The Defendants did not grant any warranties regarding the availability of water, the certificate for water from the Saddle Mountain Water Association or quiet enjoyment. CP 166. The purpose in excluding the warranties, except title, was to avoid involvement in any litigation about water, quiet enjoyment, or other harassment likely to occur given the past acts of Mr. Heeb. CP 80.

x. Bill Morris, who is a member of the board of the Saddle Mountain Water Association, has filed a declaration in Adams County Cause No. 05-2-00265-8 between Rafaela Maryanna Arceo<sup>1</sup>, aka Maryann Rodriquez v. Steven M. Heeb and Beverly L. Heeb regarding a certificate for delivery of water from the Saddle Mountain Water Association.

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<sup>1</sup> The Warring Law Firm, P.S. sold the property to Jose Angel Soledad. The record does not reflect how title was transferred to Rafaela Maryanna Arceo. The same real property is involved.

The declaration states that the Saddle Mountain Water Association issued the water certificate according to its by-laws. CP 192-195.

y. A parcel of property within the Associations' service area is entitled to a certificate for water from the Association. The certificate for water is appurtenant to the parcel and is not personal property. CP 49.

z. The Defendants did not attempt to transfer any water certificate and did not make a request to Saddle Mountain Water Association to issue a certificate. The Defendants did not have any connection to the Association or its decision to issue the certificate. CP 49, 81.

aa. The Declaration in Adams County Cause No. 05-2-00265-8 states that Mr. Heeb had been required to grant an easement for the water line in order to secure approval of the subdivision where the lot is located. CP 192-195. He was required to restore or permit the restoration of the connection of water from the Association to the residence. CP 49, 50-53, 192-195.

bb. The Defendants were not involved in any manner with the litigation between Mr. Heeb, Saddle Mountain Water Association, and Rafaela Maryanna Arceo. The Defendants did not supply any aid, documents, or information to any of the parties involved in that cause of action, nor did they receive any requests for documents or aid. None of the Defendants were even called as witnesses. CP 81.

cc. Mr. Heeb has been involved in four causes of action where he raised or

could have raised virtually all of the claims asserted in this action. The first opportunity was Adams County Cause No. 01-2-00153-5, Warring v. Heeb. The second cause of action was Adams County Cause No. 04-2-00059-2, Heeb v. Warring. The third was Grant County Cause No. 05-2-00681-8, Heeb v. Warring. The fourth cause of action was Adams County Cause No. 05-2-00265-8, Arceo v. Heeb.

dd. The claims raised in the current cause of action against the Defendants were either raised in the previous causes of action or are based on the same facts or claims that could have been raised in those causes of action. CP 77-84.

ee. The first cause of action was filed March 4, 2004 under Adams County Superior Court Cause No. 04-2-00059-2 alleging a failure to return Mr. Heeb's papers. CP 146-147. A change of venue was ordered in this matter to transfer the cause of action to the Grant County Superior Court.

ff. Instead of transferring the cause of action, Mr. Heeb filed a new action by filing a Summons, but did not file a Complaint in Grant County Superior Court under Cause No. 05-2-00681-8. CP 151-152. This cause of action was dismissed without prejudice on August 21, 2005. CP 154-155.

gg. On July 19, 2007, an Order of Dismissal was filed dismissing Adams County Superior Court Cause No. 04-2-00059-2 without prejudice. CP 149. Mr. Heeb had an opportunity to raise all of the current claims because all the facts known to him now were known to him then. CP 189.

hh. The allegations of Mr. Heeb's current Complaint are virtually the same issues as those raised and went tried in the Adams County Superior Court Cause No. 01-2-00153-5. Any additional claims could have been raised in Adams County Superior Court Cause No. 04-2-00059-2 or Grant County Cause of Action Cause number 05-200681-8. Even the allegations related solely to the cause of action between Mr. Heeb, Saddle Mountain Water Association, and Rafaela Maryanna Arceo were known in 2005 when the Grant County action was filed. CP 82.

IV. Summary of Case

The trial court entered an Order Granting Summary Judgment on two grounds. First, that all the claims, except two, were barred by res adjudicate or claim preclusion. Second, all of the claims asserted by Mr. Heeb were barred by the Statute of Limitations. CP 366-367. The Defendants were retained by Mr. Heeb, the Appellant, in 1999 to represent him, primarily in a dissolution and a criminal misdemeanor charge. After the trial of the dissolution and entry of the findings of fact and conclusions of law and decree, a dispute arose regarding the fees to be paid. The Defendants brought a cause of action against Mr. Heeb for the fees. The amount of the fees were determined after an arbitration and a de novo trial. Because Mr. Heeb refused to pay the judgment an execution sale was initiated by the Defendants. A parcel of property owned by Mr. Heeb was

purchased by the Defendants at the execution sale for the amount of the judgment. An order of confirmation of the sale was entered. A year later Mr. Heeb attempted to redeem the property but failed to tender the correct amount to the Adams County Sheriff. Because he failed to tender all sums due the sheriff's deed for the property was issued to the Defendants. This property was subsequently sold to Jose "Angel" Soledad. The Saddle Mountain Water Association that supplies residential water issued a water certificate to Rafella. Mr. Heeb brought two previous causes of action against the Defendants in 2004 and 2005, both of which were dismissed. In 2009, Mr. Heeb brought this current action against the Defendants. The Defendants brought a Motion For Summary Judgment on the basis of res judicata, failure to state a claim on which relief could be granted and the statute of limitations and requesting reasonable attorney fees. The motions were granted. Mr. Heeb appealed in May of 2010. The Court of Appeals should uphold the trial court on the basis that all of the claims are barred by res judicata claim preclusion and failure to state a claim and/or the Statute of Limitations.

V. Legal Argument.

1. Standard of Review.

This matter was decided below on the Defendants' Motions for Summary Judgment. Mr. Heeb has appealed the Order Granting Summary Judgment that dismisses all of his claims against the Defendants. The standard of review is

therefore de novo. *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 271, 267 P.3d 998 (Wash. 2011).

2. Mr. Heeb Failed To File Opposing Declarations or Opposing Memorandum.

In summary judgment proceedings, “[t]he evidence before the judge is that contained in the verified pleadings, affidavits, admissions and other material properly presented.” *Chase v. Daily Record, Inc.*, 83 Wn.2d 37, 42, 515 P.2d 154 (1973) (emphasis added). The only evidence properly before the trial court was that provided by the Defendants, which was not contradicted by Mr. Heeb. Where “reasonable minds could reach but one conclusion from the admissible facts in evidence, summary judgment should be granted.” *Marquis v. Spokane*, 130 Wn.2d 97, 105, 922 P.2d 43, (1996) (citing *LaMon v. Butler*, 112 Wn.2d 193, 199, 770 P.2d 1027, cert. denied, 493 U.S. 814 (1989)).

Mr. Heeb failed to affirmatively supply the trial court with any admissible evidence or specific facts showing a genuine issue of fact for trial. CR 56(e) explicitly outlines the requirements for the form of affidavits and defense required.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.... When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise

provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

CR 56(e). Mr. Heeb instead relied on his unverified Complaint in opposition to the Motion For Summary Judgment. He may not rest on his mere allegations in his pleadings. *Vallandigham v. Clover Park Sch. Dist.*, 154 Wn.2d 16, 26, 109 P.3d 805 (Wash. 2005); *Heath v. Uraga*, 106 Wn. App. 506, 513, 24 P.3d 413 (Wash. Ct. App. 2001); *Grimwood v. Puget Sound*, 110 Wn.2d 355, 359, 753 P.2d 517 (1988); *Scott v. Petett*, 63 Wn. App. 50, 55-6, 816 P.2d 1229 (1991).

Furthermore, the Defendant's declarations were not contradicted and may be taken as true for the purposes of deciding the summary judgment. *Chase v. Daily Record, Inc.*, 83 Wn.2d 37, 42, 515 P.2d 154 (1973). The trial court decision should therefore be affirmed.

3. The Three-Year Statute Of Limitation Applies.

(a) Mr. Heeb has asserted in his brief that Judge Frazier in Adams County Cause No. 04-2-00059-2 dismissed the action without prejudice on July 23, 2007. (CP 149). He somehow believes that Judge Frazier's dismissal without prejudice permits him to assert all the claims he believes he ever had at any time. A dismissal without prejudice does not reset or toll the statute of limitations. Mr. Heeb's claims are based on his assertion that the fees charged him prior to 2001 were excessive, there were defects in the execution sale to satisfy the Adams County judgment entered in Cause No. 01-2-00153-5 and that the Defendants

somehow deprived him of his Saddle Mountain Water Association Certificate in September of 2005. Because all the factual basis for Mr. Heeb's claims are based in a parol contract or tort and the acts occurred more than three years prior to April 2009, all of the claims are barred by the three year statute of limitations. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 109, 47 P.3d 594 (2002). None of the claims asserted by Mr. Heeb could be revived by the 2007 dismissal without prejudice. There are many reasons why a statute of limitations might be tolled but none exist in this case. Mr. Heeb has not cited any argument or legal authority as a basis to toll the statute. Mr. Heeb simply refuses to accept that the term without prejudice does not mean that he can re-file any claim he ever thought he had despite the lapse of three years since the causes of action, if any, arose.

(b) Any and all of Mr. Heeb's claims arose more than three years prior to the date of filing of the Complaint on April 30, 2009. The services provided to him arose out of a parol agreement. Mr. Heeb maintains that he was deprived of the right to redeem his property; that claim is based on his failure to follow the statutory procedure to redeem and failed to tender the full redemption amount to the Adams County Sheriff. This act occurred April 30, 2005. Four years expired before Mr. Heeb filed the current suit on April 30, 2009. Mr. Heeb's causes of action whether based on contract or in tort were time-barred three years after they arose. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 109, 47 P.3d

594 (2002) *Bogle & Gates v. Holly Mountain Res.*, 108 Wn. App. 557, 561, 32 P.3d 1002 (2001); RCW 4.16.050(3).

The 01-2-00153-5 collection action concluded with the issuance of the sheriff's deed issued on May 4, 2005. CP 80, 189-190. Since 2004, the Defendants have responded to three causes of action filed by Mr. Heeb. Two of these causes of action were dismissed because Mr. Heeb failed to establish a cause of action that he claimed to have or prosecute the action when claims were stated. CP 82, 149, 154-155. This cause of action was filed April 30, 2009. Eight years had passed since the last legal services were provided to Mr. Heeb and more than four years had passed since the issuance of the sheriff's deed on May 4, 2005. If he had some cause of action against the Defendants arising out of the legal services rendered to him, he had a duty to present them by August of 2004. He in fact did contest the amount due. Even if he had a legitimate cause of action against the Defendants it is now time-barred. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 109, 47 P.3d 594 (2002) *Bogle & Gates v. Holly Mountain Res.*, 108 Wn. App. 557, 561, 32 P.3d 1002 (2001); RCW 4.16.050(3).

4. Res Judicata and/or Claim Preclusion.

This is the third cause of action brought by Mr. Heeb against the Defendants. CP 80-81. Mr. Heeb's dispute revolves around the circumstance of the Defendants having represented him in a number of matters. The agreement to pay fees in return for those services was in parol. The two primary matters for

which Mr. Heeb needed representation was the dissolution of his marriage and a District Court criminal action for permitting occupancy of two homes without a certificate of occupancy. Mr. Heeb also requested advice on several other matters and representation on a harassment matter in Franklin County. CP 77; 168-170.

Mr. Heeb failed to pay for the legal services provided to him by the Warring Law Firm, P. S. In August of 2001, under Adams County Cause No. 01-2-00153-5, the Firm brought a cause of action against him to secure payment of the fees that he owed. CP 89-91. After arbitration hearings and a trial de novo, a judgment was entered against Mr. Heeb. He continued to refuse to pay for the services even though a judgment had been entered on February 9, 2004, fixing the amount owed. CP 111-112. An execution sale of a parcel of his real property was held on April 30, 2004 to satisfy the judgment. CP 142. An Order Confirming Sale was entered June 7, 2004. CP. 142-144. A Sheriff's Deed conveying title to the property sold at execution sale was issued May 5, 2005. CP 189.

If Mr. Heeb believes that there was some defect in the execution sale, he was required to raise it before the Order of Confirmation was entered. Any claim revolving around the redemption of the property from an execution sale was required to be filed and served no later than April 30, 2005, before the redemption period expired. *Le Tastevin, Inc. v. Seattle First*, 95 Wn. App. 224, 225, 974 P.2d 896 (1999); *Millay v. Cam*, 135 Wn.2d 193, 206 955 P.2d 791 (1998).

Mr. Heeb previously filed two causes of action against Carl N. Warring, the Warring Law Firm, P. S. and Ms. Otey who was an employee of the Firm during both causes of action. On March 4, 2004, in the Adams County Cause of Action under Cause No. 04-2-00059-2 and Grant County Cause of Action Cause No. 05-2-00681-8, on June 3, 2005. In Adams County, Cause No. 01-2-00153-5 and in Adams County Cause No. 04-2-00059-2. Mr. Heeb asserted a right to recover damages for withholding his personal papers. CP 109; CP 146-147. Adams County Cause No. 04-2-00059-2 was ordered transferred to Grant County on a change of venue. Instead of a transfer on June 3, 2005, Mr. Heeb filed and served a Summons, commencing a new cause of action. He failed to file or serve a Complaint in the Grant County Superior Court under Cause No. 05-200681-8. CP 151-152. This cause of action was dismissed without prejudice on August 21, 2005. CP 154-155. On July 19, 2007, an Order of Dismissal was entered dismissing Adams County Superior Court Cause No. 04-2-00059-2 without prejudice. CP 149.

By the time that Mr. Heeb filed his 2005 cause of action in Grant County under Cause No. 05-200681-8, all of the facts on which the current claims are based had been raised or could have been raised. Once the Adams County Cause No. 01-2-00153-5 was fully litigated, all of the claims he is now asserting in this cause of action, except the water certificate claim and the domestic relations order claim, were asserted and are now barred by res judicata and issue preclusion. CP

111-113. They were all causes of action actually raised or were required to be raised in one or all of the four previous causes of action. *Christensen v. Grant County Hosp.*, 152 Wn.2d 299, 306-307, 96 P.3d 957; 96 P.3d 957 (Wash. 2004); *Lenzi v. Redland Ins. Co.*, 140 Wn.2d 267, 280, 996 P.2d 603 (Wash. 2000). Mr. Heeb had his day in court on previous occasions. The trial court was correct in dismissing the current action.

5. Grand Theft.

Mr. Heeb has failed to establish any factual basis to prove theft by the Defendants from him. If he is referring to the execution sale of real property or the redemption process as the theft, an execution sale to satisfy a final judgment is not theft. It is specifically authorized by statute. RCW 6.17.et.seq.

If Mr. Heeb is alleging the issuance of the water certificate by the Saddle Mountain Water Association to Rafaela Maryanna Arceo as the subject of the theft, he has failed to state any facts that support such a cause of action. Rafaela Maryanna Arceo filed a cause of action in cause number 05-2-00265-against Mr. Heeb in 2005. CP 192. This cause of action involved the issuance of a water certificate for the right to receive domestic water by Saddle Mountain Water Association. CP 192-195. Mr. Heeb did not join any of the Defendants in the Adams County Cause of Action Number 05-00265-8. CP 81, 192-195. Mr. Heeb certainly knew all the facts in 2005 that he now alleges to support some supposed claim in this case. The water certificate issued to Rafaela Maryanna

Arceo was issued by the Saddle Mountain Water Association in accordance with its by-laws. CP 49, 50-53.

The Declaration of Bill Morris filed in the *Arceo v. Heeb*, Cause No. 05-2-00265-8, establishes a certificate of water right was issued to Rafaela Maryanna Arceo by the Saddle Mountain Water Association in 2005. CP 192-195. The Declaration makes it clear that the issuance of the certificate was the sole act of Saddle Mountain Water Association in accordance with the Association's by-laws. It appears that the legality of the issuance of the certificate has been litigated between the Rafaela Maryanna Arceo and Mr. Heeb. This cause of action was decided adversely to him. His instant complaint against the Defendants asserts a claim that it was his certificate that was transferred to Rafaela Maryanna Arceo. CP 4. The evidence in the record establishes it was a new certificate that was issued to Rafaela Maryanna Arceo. The certificate states it is appurtenant to the parcel and is not the personal property of the individual owning the parcel. CP 49, 50-53, 192-195. Nor has Mr. Heeb cited any specific evidence that the Defendants were involved in the issuance of the certificate to Rafaela Maryanna Arceo. His bald speculations and hyperbole in the Complaint are entirely unsupported and untrue. CP 80-81. Mr. Heeb has failed to make any connection between the issuance of a water certificate to Rafaela Maryanna Arceo and any harm caused to him. The manager of the Association states that an owner of a parcel of land may have a certificate to secure a domestic supply of water.

CP 193-194. Mr. Heeb fails to state a claim upon which relief can be granted. He had a duty to investigate the facts and determine that it was supported by the evidence. *Rhinehart v. Seattle Times*, 59 Wn. App. 332, 340, 798 P.2d 1155 (1990). He failed to investigate the claim in good faith. There is nothing in the record that supports Mr. Heeb's claims except his own unfounded and unsupported assertions. His mere speculation that the Defendants conspired with the Association does not establish a factual basis to make the allegation. *Rhinehart v. Seattle Times*, 59 Wn. App. 332, 340, 798 P.2d 1155 (1990).

In any case, the facts on which such a cause of action could be based occurred more than three years prior to the filing of this cause of action, and is therefore time-barred. *Bennett v. Computer Task Group, Inc.*, Id; *Bogle & Gates v. Holly Mountain Res.*, Id; RCW 4.16.050(3).

6. Award of Reasonable Attorney Fees.

The Defendants are entitled to an award of reasonable attorney fees because there was legal authority for the Superior Court to award reasonable attorney fees and the legal basis is the same on appeal and pursuant to RAP 18.1. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 593, 220 P.3d 191 (2009).

Mr. Heeb's claims against the Defendants are frivolous. The entire cause of action is frivolous because; (1) he has previously litigated the claims or had an opportunity to do so; (2) all of the claims are clearly barred by the statute of limitation; (3) the action is not well grounded in fact; (4) it is not warranted by

existing law; and (5) he has signed and is bound by CR 11 to conduct reasonable inquiry into the factual or legal basis of the action which he has failed to do.

*Rhinehart v. Seattle Times*, 59 Wn. App. 332, 340, 798 P.2d 1155 (1990).

Despite the voluminous material supplied by Mr. Heeb, the facts alleged do not state a cause of action for any of the acts of the Defendants. The other claims have already been resolved by previous litigation. He has failed to establish a legal cause of action recognized at law and has failed to establish any proximate cause between the unfounded allegations made by him and any damages he claims to have sustained. Even if any of the circumstances that arose between August of 1999 and May of 2005 supported some cause of action, the statute of limitations bars the claim. *Bennett v. Computer Task Group, Inc., Id.*; RCW 4.16.050(3). There is no reasonable basis or legal argument advanced by Mr. Heeb to support a cause of action barred by the statute of limitations. Mr. Heeb's allegations that the attorney's fees were excessive were resolved against him in Cause No. 01-2-00153-5. CP 78-79, 110-111. He also brought motions to vacate the judgment and a motion to vacate the writ of execution. CP 115-120, 126-131, 136-137.

The allegations that his real property should not have been sold to satisfy the judgment were resolved against him when the Order Confirming Sale was entered and when the redemption period expired. CP 142-144. Mr. Heeb filed two separate motions to set aside the sheriff's execution sale in Cause No.

01-2-00153-5. Both motions were denied. CP 133-134, 139-140. Res judicata and issue preclusion bars re-litigation of these issues between the parties. Mr. Heeb's present cause of action is not well grounded in the facts or the law and should not have been filed. There is no legal authority or extension of any known theory, which would support a cause of action against the Defendants. He has not established any misconduct by the Defendants, nor has he established any basis for a cause of action, nor has he established proximate cause that any improper act by the Defendants injured him. There is no basis to argue that executing on his real property to satisfy a valid judgment constitutes grand theft. There is no factual or legal basis to argue that the Defendants were involved in the issuance of the certificate of ownership to Rafaela Maryanna Arceo by the Saddle Mountain Water Association or that the issuance of a certificate to Rafaela Maryanna Arceo somehow injured him.

VI. Conclusion.

In conclusion, the Appellate Court should uphold the decision of the trial judge on the basis of res judicata, issue preclusion, failure to state a cause of action, statute of limitations and that the cause of action is frivolous. The Defendants should be awarded reasonable attorney's fees for responding in the Appellate Court as provided by RCW 4.84.185 and RAP 18.1 because this action is frivolous.

Dated this 20 day of February 2013.

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By   
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