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No. 29836-1

COURT OF APPEALS, DIV III

RAY STEINBOCK, a married individual,  
BARBARA STEINBOCK, a married individual,

Appellants,

v.

FERRY COUNTY PUBLIC UTILITY DISTRICT, No 1,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR FERRY COUNTY

The Honorable Harold D. Clark III, Judge

BRIEF OF RESPONDENT

STEPHEN T. GRAHAM  
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STATEMENT OF FACTS AND PRIOR PROCEEDINGS

The Ferry County Public Utility District is a governmental entity providing power to the citizens of parts of Ferry County and Okanogan County, as authorized by RCW 54. At the time of the relevant proceedings on this matter, the P.U.D.'s general manager of the utility was Ms. Roberta Weller. CP 69. The plaintiff Barbara Steinbock opened an account for electrical services for her tavern the "Hitching Post" on September 2<sup>nd</sup>, 2005. CP 69. As part of signing up for electrical service, a customer signs an application for service that provides that the service is "...subject to all of the provisions of P.U.D. Rules and Regulations and Rate Scheduled now existing..." CP 69. Soon after signing the contract, Ms. Steinbock's account began to become delinquent. CP 69. In less than four months, (i.e. by December 30<sup>th</sup>, 2005), Ms. Steinbock's delinquency grew to \$3362.00. CP 69. By March 31<sup>st</sup>, 2006, the amount due on the account was \$5144.00. Finally, the P.U.D. disconnected her power on May 8<sup>th</sup>, 2006. CP 70. Before the power

would be reconnected, the P.U.D. required a security deposit from the Steinbocks. CP 70. In Section 5.4 of the P.U.D.'s policy, commercial customers must pay "a cash deposit based on the estimated two highest months usage..." CP 76. The security deposit was set at \$3170.00. CP 92. Ms Steinbock signed an agreement to that effect, and the agreement covered her other delinquent properties. CP 92. A calendar was kept of the payments. CP 93. Ms. Steinbock fell behind on her bill again, and did not live up to her part of the signed agreement. CP 70-71. Ms. Weller attempted to contact Ms. Steinbock by phone and left messages for her, but never heard back. CP 71. The service was terminated to her properties on July 27<sup>th</sup>, 2006 for non-payment. CP 71; CP 103. Mr. Steinbock went in to the P.U.D. office asking if he could continue to make partial payments, but was told that he would have to pay the entire past due amount before service could be restored. CP 101.

As a way of circumventing having to pay for the past due power, Ms. Steinbock's friend, Lester Godfrey, had the power in her residence switched over to his name. CP 100-101. The P.U.D.

discovered this ruse, and disconnected the power. CP 101-103. Similarly, Ms. Steinbock sought other ways to have her power restored without having to pay the past due on her account. CP 103. Mrs. Steinbock had her neighbor Randy Hursh run an extension cord from his home over to hers. CP 103.

The P.U.D. manager told Mr. Hursh that this was not allowed. CP 100. Section 32 of the P.U.D. policy provides "No purchaser of electric energy shall connect his service with that of any other person, or in any way resell, rebill or supply any other person or premises with electric current through his service." CP 84.

The Steinbocks filed the First Amended Complaint for Damages on May 14<sup>th</sup>, 2009. CP 1. The complaint sued for negligence, negligent supervision, outrage, harassment, and wrongful debt collection practices. The P.U.D. thereafter filed a motion for summary judgment on June 2, 2009 (CP 54), a memorandum in support (CP 105), and a declaration in support on June 25<sup>th</sup>, 2009. CP 68. The court denied the Steinbocks' motion to file an amended complaint on December 21<sup>st</sup>, 2009. CP 170. The court granted the P.U.D.'s motion for summary judgment on February 18<sup>th</sup>,

2010. CP 188. The court explained that it considered "the unpublished opinion of Division III Washington State Court of Appeals, Steinbock v. Ferry County, 2009 WL 3646206" and explained why each allegation should fail. CP 197. The court also denied a motion by the Steinbocks to amend the complaint to add additional allegations.

CP 191. The court explained in a December 21<sup>st</sup>, 2009 letter opinion that the Plaintiffs' "additional cause of action are futile and meritless in light of the Court of Appeals' recent ruling." CP 193.

#### ARGUMENT

1. ISSUE ONE: WAS THE DENIAL OF THE STEINBOCKS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AN ABUSE OF DISCRETION?

The question before the court was whether the Plaintiffs Barbara and Ray Steinbock should have been granted leave to amend their complaint.

Their pending complaint consisted of a tort action, alleging the following causes of action:

1. Negligence, 2. Negligent Supervision,
3. Outrage, 4. Harassment, 5. Wrongful Debt

Collection Practices. The Plaintiffs then wanted to try to amend the complaint to add a civil rights claim and a claim for declaratory judgment. CP 151. This request was properly denied under CR 15 because the defendants would have been prejudiced, and because the proposed cause of action was frivolous.

Superior Court Civil Rule 15(a) provides:

Rule 15. Amended and supplemental pleadings

(a) Amendments A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

An appellate court reviews the denial of a motion to amend a pleading for manifest abuse of discretion. Herron v. Tribune Publ'g Co., 108 Wn.2d 162, 165, 736 P.2d 249 (1987). A trial court abuses its discretion when it bases the decision on untenable grounds or reasons. Nepstad v. Beasley, 77 Wn. App. 459, 468, 892 P.2d 110 (1995). "The touchstone for denial of an amendment is the prejudice such amendment would cause the nonmoving party." Caruso v. Local Union No. 690 of Int'l Bhd. of Teamsters, 100 Wn.2d 343, 350, 670 P.2d 240 (1983). However, "... in determining prejudice, a court may consider undue delay and unfair surprise as well as the futility of amendment." Haselwood v. Bremerton Ice Arena, 137 Wn. App. 872, 890, 210 P.2d 308 (2007).

Judge Clarke noted that the trial court had already dismissed all of the earlier breach of contract claims, and that this decision was affirmed by the Court of Appeals. CP 192. "The Court of Appeals unanimously ruled that the Defendant was contractually entitled to make the power disconnection." CP 193. The trial judge found that the Plaintiffs' "additional causes of action are futile and meritless in light of the

Court of Appeal' recent ruling." CP 193.

In the case of Haselwood v. Bremerton Ice Arena, the court of appeal affirmed the trial courts denial of the motion to amend because the court was "satisfied that the trial court could have reasonably determined that the proposed amendments were meritless, futile, or unfairly prejudicial" and the moving party "...did not allege sufficient facts to establish" the cause of action. 137 Wn. App. 872, 890 (2007). The court concluded that the "new theory of liability lacked legal support." Id. The Steinbocks could not logically argue that the P.U.D. somehow violated someone's civil rights by disconnecting their power in light of the Court of Appeals' ruling that the P.U.D. was contractually entitled to make the disconnection. Additionally, a complaint for declaratory relief was pointless because the Court of Appeals had already ruled on the respective rights of the parties.

#### ELECTION OF REMEDIES

The Steinbocks contend the court unfairly forced them to make an election of remedies. Relying on Anderson Feed & Produce Co. v. Moore,

66 Wn.2d 237, 401 P.2d 964 (1965), they argue the tort theories complemented the contract theories. In Anderson Feed, the court explained that a plaintiff cannot be compelled "to choose at his peril the theory upon which he intends to rely and thereby possibly defeat a recovery where two consistent, concurrent or cumulative theories can be urged without prejudice to the defendant's ability to defend." 66 Wn.2d at 242. There was nothing in the court ruling which forced the Steinbocks to make such an election. Rather the Steinbocks had a turn to try to substantiate both theories, and each theory was in turn rejected. No election of remedies was forced.

#### DOCTRINE OF COLLATERAL ESTOPPEL

Collateral estoppel, also known as issue preclusion, "prevents relitigation of an issue after the party estopped has had a full and fair opportunity to present its case". Hanson v. Snohomish, 121 Wn.2d 552, 561, 852 P.2d 295 (1993). The doctrine of issue preclusion respects the finality of a previous judgment on a particular issue, even though a party now asserts a different claim or cause of action.

Barr v. Day, 124 Wn. 2d 318, 324, 879 P.2d 912 (1994); Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 W.L.R. 805, 829 (1985). Courts apply issue preclusion when (1) the current adjudication and the previous one involve an identical issue; (2) the prior adjudication concluded with a final judgment on the merits; (3) the two adjudications involve the same parties (or those in privity); and (4) it is not unjust to apply the doctrine to the party precluded from relitigating an issue. Dep't of Ecology v. Yakima Reservation Irri. Dist., 121 Wash. 2d 257, 296, 850 P.2d 1306 (1993). The decision of the trial court in the case at bar did not turn on the issue of collateral estoppel; no mention of that theory of law was referenced in his memorandum decision. CP 196-198. The judge simply took guidance from the earlier decision of the Court of Appeals.

#### THE CIVIL RIGHTS CAUSE OF ACTION

The trial judge properly denied the Plaintiffs' motion to add an allegation to the complaint that would charge a violation of civil rights. The plaintiffs cannot argue that the

P.U.D. somehow violated someone's civil rights by disconnecting their power if the Court of Appeals ruled that the P.U.D. was contractually entitled to make the disconnection. The question was not addressed in the Steinbock's appellate brief either.

#### THE DECLARATORY RELIEF CAUSE OF ACTION

A complaint for declaratory relief was pointless because the Court of Appeals had already ruled on the respective rights of the parties. The trial court correctly denied the motion to add this allegation to the complaint.

2. ISSUE TWO: WAS THE GRANTING OF THE P.U.D.'S MOTION FOR SUMMARY JUDGMENT ON THE FIRST AMENDED COMPLAINT ERROR?

Superior Court Civil Rule 56(a) provides:

A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of the motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

The function of a summary judgment is to avoid a useless or unnecessary trial. Preston v. Duncan,

55 Wn.2d 678, 349 P.2d 605 (1960); Balise v. Underwood, 62 Wn.2d 195, 381 P.2d 966 (1963). Summary judgment is available if reasonable persons could reach but one conclusion and that conclusion is that the moving party is entitled to a judgment as a matter of law. Wood v Battleground School District, 107 Wn.App. 550, 27 P.3d 1208 (2001). A dispute of material facts is needed to defeat a summary judgment motion. Fraternal Order of Eagles Tenino Aerie No. 564 v Grand Aerie of Fraternal Order of Eagles, 148 Wn.2d 724, 59 P.3d 655 (2002). It is the moving party's burden to first show an absence of issues of material fact and then the burden shifts to the nonmoving party to set forth specific contested facts. Iwai v. State, 129 Wn. 3d 84, 915 P.2d 1089 (1996). If the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial", then the trial court should grant the motion." Young v Key Pharms., 112 Wn.2d 216, 225, 770 P.2d 182 (1989), quoting Celotex Corp. v Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L. Ed. 2d 265 (1986).

## NEGLIGENCE-COMPLIANCE WITH POLICY

Negligence is the failure to act reasonably under the circumstances. Gordon v. Deer Park Sch. Dist. No. 414, 71 Wn.2d 119, 122, 426 P.2d 824 (1967); RESTATEMENT (SECOND) OF TORTS § 282 (1965). The elements of actionable negligence are (1) the existence of a duty, (2) the breach thereof, which must be a proximate cause of the injury, and (3) the resulting damage. Pate v. General Electric Co., 43 Wn.2d 185, 260 P. 2d 901 (1953); McCoy v. Courtney, 25 Wn.2d 956, 172 P.2d 596 (1946). "'Negligence is conduct, and not a state of mind.' In most instances, it is caused by heedlessness or carelessness, which makes the negligent party unaware of the results which may follow from his act." Prosser on Torts (2d ed.) 119, § 30.

The Plaintiffs allege that the trial court somehow based its summary judgment order on a doctrine of issue preclusion or collateral estoppel, but no such rationale is found in the judge's ruling. CP 196. The trial judge does take note of the fact that the Court of Appeals

already had rejected any breach of contract claim. CP 196-197. Whether in Superior Court or on appeal, the Steinbocks never did explain how a person can be held to account for committing an act negligently, when a higher court has already ruled that the same party was legally entitled to commit that same act intentionally.

It is important to note, that while allegiance to the policy is an issue in the contract claim, violation of the policy does not create negligence as a matter of law. "Unlike administrative rules and other formally promulgated agency regulations, internal policies and directives generally do not create law." Joyce v. Dep't of Corr., 155 Wn.2d 306, 323, 119 P.3d 825 (2005). At most, an internal policy "may provide evidence of the standard of care and therefore be evidence of negligence." Id. at 324. When policy directives are offered as evidence of negligence, the jury should be provided WPIC 60.03, (6 WASHINGTON PATTERN JURY INSTRUCTIONS: CIVIL 60.03, at 481 (2005) or a similar instruction which clarifies that a violation is not negligence per se. Joyce v. Dep't of Corr., at 324. In that case, the jury was instructed

that the community corrections officer was legally required to report violations (of probationers) within 30 days, and the State was not given an instruction which would have permitted it to argue that the directive was only evidence of negligence. Id. Consequently, the judgment was overturned on appeal.

#### NEGLIGENT SUPERVISION

The issue of negligent supervision is obviously tied to the above issue of whether or not the P.U.D. acted negligently. The Plaintiffs alleged in paragraph 171 of their amended complaint that Commissioners Kroupa, Ciais, and Caudell are responsible to see that P.U.D. staff "carried out the established P.U.D. policy in performing their employment duties." CP 46. On point is the case of Niece v. Elmview Group Home, 131 Wn.2d 39 (1997). In that case, the Washington Supreme Court explained:

Even where an employee is acting outside the scope of employment, the relationship between employer and employee gives rise to a limited duty, owed by an employer to foreseeable victims, to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others. This duty gives rise to causes of action for negligent hiring, retention and supervision. Liability under these theories is

analytically distinct and separate from vicarious liability. These causes of action are based on the theory that "such negligence on the part of the employer is a wrong to [the injured party], entirely independent of the liability of the employer under the doctrine of respondeat superior." Scott v. Blanchet High Sch., 50 Wn. App. 37, 43, 747 P.2d 1124 (1987) (quoting 53 Am. Jur. 2d Master and Servant § 422 (1970)), review denied, 110 Wn.2d 1016 (1988). Washington cases have generally held that an employer is not liable for negligent supervision of an employee unless the employer knew, or in the exercise of reasonable care should have known, that the employee presented a risk of danger to others.

Elmview Group Home, at 131 Wn.2d 39, 48-49. In the case at bar, the plaintiffs did not plead any facts that the Steinbocks went to see the board of commissioners about any of their issues. It is helpful to take a look at the structure of a P.U.D. under Washington law, and the role of the commissioners and the manager:

§ 54.16.100. Manager -- Appointment --  
Compensation -- Duties

The commission, by resolution introduced at a regular meeting and adopted at a subsequent regular meeting, shall appoint and may remove at will a district manager, and shall, by resolution, fix his or her compensation.

The manager shall be the chief administrative officer of the district, in control of all administrative functions and shall be responsible to the commission for

the efficient administration of the affairs of the district placed in his or her charge. The manager shall be an experienced executive with administrative ability. In the absence or temporary disability of the manager, the manager shall, with the approval of the president of the commission, designate some competent person as acting manager.

The manager may attend all meetings of the commission and its committees, and take part in the discussion of any matters pertaining to the duties of his or her department, but shall have no vote.

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of his or her department are enforced;

Thus it is clear that the commissioners are not empowered with the ability to micromanage the utility nor to read the mind of a particular consumer who has an issue. It is the manager who is "in control of all administrative functions", not the individual commissioners. Additionally, under section 15.3 of the district policy it is clear that a consumer has the right to appeal a decision of the manager. CP 78. The Steinbocks never pursued such an appeal.

## OUTRAGE

The tort of outrage requires the proof of three elements: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to plaintiff of severe emotional distress. Reid v. Pierce County, 136 Wn.2d 195, 202, 961 P.2d 333 (1998) (citing Dicomes v. State, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989)). These elements were adopted from the Restatement (Second) of Torts § 46 (1965) by our State Supreme Court in Grimsby v. Samson, 85 Wn.2d 52, 59-60, 530 P.2d 291 (1975).

The court in Grimsby ruled that a claim for intentional infliction of emotional distress must be predicated on an action "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" Id. at 59 (quoting Restatement (Second) of Torts § 46 cmt. d). That must be action "'which the recitation of the facts to an average member of the community would arouse his resentment against the actor and lead him to exclaim "Outrageous!"'" Reid, 136 Wn.2d at

201-02 (quoting Browning v. Slenderella Sys. of Seattle, 54 Wn.2d 440, 448, 341 P.2d 859 (1959) (quoting Restatement of Torts § 46(g) (Supp. 1948)). Accordingly, the tort of outrage "'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" The Washington Supreme Court has explained:

... It is not enough that a "defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort." Liability exists "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."

Grimsby v. Samson, 85 Wn.2d 52, 59, 53 P.2d 291 (1975).

The courts function as gate keepers in cases like this. Many actions done by governmental entities are unpopular but are privileged or allowed under the circumstances. See Citoli v. City of Seattle, 115 Wn. App. 459, 61 P.3d 1165 (2002). In Citoli, the city of Seattle was forced to turn

off power to a building in which protestors were holed up. Id. A lawful tenant had his power turned off too for a week, and he complained about the damage to his business. Id. The court explained:

...Citoli argues that Puget Sound Energy and the City Defendants are liable for the tort of outrage. This tort requires: (1) outrageous and extreme conduct by the defendant, (2) the defendant's intentional or reckless disregard of the probability of causing emotional distress, and (3) actual result to the plaintiff of severe emotional distress. Commodore v. University Mech. Contractors, Inc., 120 Wn.2d 120, 135, 839 P.2d 314 (1992). Liability exists "'only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975), quoting RESTATEMENT (SECOND) OF TORTS § 46, cmt. d (1965)). Although the question of whether conduct is sufficiently outrageous is ordinarily a question for the trier of fact, the court must first determine whether "reasonable minds could differ on whether the conduct has been sufficiently extreme and outrageous to result in liability." Spurrell v. Block,

40 Wn. App. 854, 862, 701 P.2d 529 (1985). Viewing the facts in the light most favorable to Citoli, he has not met this standard. Seattle City Light and Puget Sound Energy behaved properly, not outrageously, in following the police order to terminate utilities. And the police made a reasonable decision, not an outrageous one, in choosing to follow

standard procedures in dealing with building takeover situations by shutting off utilities and waiting the protestors out, rather than forcibly evicting them in the face of a high risk of danger to life and property if forcible eviction were attempted.

Citoli at 494.

Similar to Puget Sound Energy in the above case, the Ferry County P.U.D. followed correct procedure in terminating power to Barbara Steinbock's property. It has already been established in the Court of Appeals that the P.U.D. did not breach its contract and followed its own policy. If the defendant's conduct is privileged than he may not be sued. The law provides:

The conduct, although it would otherwise be extreme and outrageous, may be privileged under the circumstances. The actor is never liable, for example, where he has done no more than insist upon his legal rights in a permissible way, even though he is well aware that such an insistence is certain to cause emotional distress.

RESTATEMENT (SECOND) OF TORTS § 46, cmt. g. The illustration that this treatise provides is follows:

[person] A and her children are destitute, ill, and unable to pay their rent. B, their landlord, calls on A and threatens to evict her if the rent is

not paid. Although B's conduct is heartless, he has done not more than the law permits him to do, and he is not liable to A for her emotion distress.

Id at para. 14. Later on, the Restatement explains that: "It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, or whether it is necessarily so." "[C]onduct which otherwise may give rise to this tort may be privileged if it is shown that the purported tortfeasor is insisting on his legal rights."

Barbe v. Great Atlantic & Pacific Tea Co., 722 F. Supp. 1257, 1262 (D. Md. 1989) (rejected a claim for IIED for a termination from employment.)

"Where an employer acts within its legal rights in terminating an employee, it is clear that the employee cannot recover for the intentional infliction of emotional distress." Therrien v. United Air Lines, Inc., 670 F. Supp. 1517, 1525 (D. Colo. 1987). Where an employer acts within its legal rights in terminating an employee, it is clear that the employee cannot recover for the intentional infliction of emotional distress.

Therrien v. United Air Lines, Inc., 670 F. Supp.

1517, 1525 (D. Colo. 1987). "[t]he existence of a legal right to take the action complained of may be a defense to a claim for intentional infliction of mental distress." Kok v. Harris, 563 So. 2d 374, 377 (La. App. 1 Cir. 1990) (rejecting a suit against a funeral home that acted according to direction of surviving spouse and scheduled the service when other family was unavailable.) In the case of Cebulski v. Belleville, the court affirmed the dismissal of a suit against a police officer who stopped a motorist for speeding and would not allow him to use the bathroom or go in the bushes, and the motorist defecated himself in the presence of his fiancé. 156 Mich. App. 190 (Mich. Ct. App. 1986). The court in Cebulski v. Belleville explained: "The officer obviously had a legal right -- indeed, a duty -- to stop plaintiff and detain him until the ticket was issued." Id. at 196. The court further explained: "Consequently, the officer cannot be held liable for insisting on his legal right in a permissible way, though he might have been well aware that such insistence was certain to cause emotional distress." Id. There was a dissenting justice in the Cebulski

case that explained: "At the very least, defendant police officer could have searched plaintiff James Cebulski for weapons and then allowed him to proceed over to the bushes." 156 Mich. App. 190, 197. The dissent further stated "This conduct goes beyond all possible bounds of decency and is intolerable in a civilized community." Id. The point of mentioning the dissenting opinion is that it should be noted that in each case, a court is called upon to make a judgment call based on the facts. Without courts serving this gate-keeping function, the gates would be open to a deluge of cases of hurt feelings. "A trial court plays a gatekeeper role in evaluating the viability of an IIED claim by assessing the allegedly tortious conduct to determine whether it goes beyond the farthest reaches of socially tolerable behavior and creates a jury question on liability." House v. Hicks, 218 Ore. App. 348, 358 (Or. Ct. App. 2008).

Another case on point is Metropolitan Life Ins. Co. v. McCarson, 467 So. 2d 277 (Fla. 1985). In that case an insurer provided round-the-clock nursing care, which the policy provided for until

it lapsed or the insured became eligible for Medicare. Id. The survivor failed to provide proof of ineligibility for Medicare, so the insurer discontinued coverage and the wife was forced into a nursing home where she died of a heart attack allegedly caused by the stress of new surroundings. Id. The court ruled:

[T]he insurance company, according to the terms of the policy, had the right to demand proof of ineligibility for Medicare. Although this demand and the withholding of further benefits had tragic results, and although we must assume from the jury's verdict that it found Metropolitan was in reckless disregard of the potential for such tragedy, Metropolitan did no more than assert legal rights in a legally permissible way. As such, Metropolitan's actions are "privileged under the circumstances."

Metropolitan Life Ins. Co. v. McCarson, 467 So. 2d 277, 279 (Fla. 1985)

In the case at bar, the P.U.D. was exercising its lawful rights in terminating the power. The cause of action for outrage was properly dismissed.

## HARASSMENT

Harassment, as a tort in Washington, does not exist outside of the civil anti-harassment statute of RCW 10.14.010 et seq. In the case of Burchell v. Thibault, the court explained that the statute "is not intended to provide redress for past injury." 74 Wn.App. 517, 522 (1994). A civil action in this case would be prohibited because of RCW 10.14.030. RCW 10.14.030(4) provides that the court must consider whether "(4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to: (a) Protect property or liberty interests; (b) Enforce the law; or (c) Meet specific statutory duties or requirements."

## WRONGFUL DEBT COLLECTION PRACTICES

Washington's Consumer Protection Act (CPA) provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." RCW 19.86.020. The purpose of the CPA is to "complement the body of federal law governing restraints of trade, unfair competition

and unfair, deceptive, and fraudulent acts and practices in order to protect the public and foster fair and honest competition." RCW 19.86.920; Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 169, 744 P.2d 1032(1987). The CPA's citizen suit provision states that "[a]ny person who is injured in his or her business or property" by a violation of the act may bring a civil suit for injunctive relief, damages, attorney fees and costs, and treble damages. RCW 19.86.090. To prevail in a private CPA claim, the plaintiff must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 784, 719 P.2d 531 (1986). "A method of debt collection is 'unfair' if it causes substantial injury, is not outweighed by countervailing benefits to consumers or competitors, and not reasonably avoidable by the consumer." Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27, 51, 204 P.2d 885 (2009).

In the case at bar, the P.U.D. was completely straightforward with the Steinbocks. In addition, the P.U.D was complying with its policy in everyway. The law is established as follows:

It is a generally accepted principle of law that, in the absence of any unfair practice on the part of the public utility, the rules and regulations adopted by the utility, which are filed with and approved by the regulatory body, necessarily enter into any contract made with the utility; these rules are binding on both the customer and the utility, and actual knowledge thereof or assent is legally immaterial.

Cullinane v. Potomac Electric Power Co., 147 A.2d 768 (D.C. 1959).

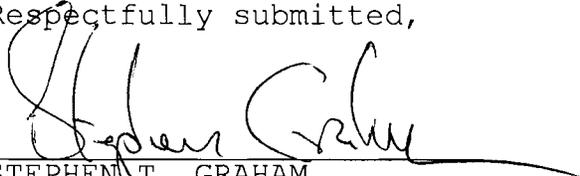
It should be noted that the federal "Fair Debt Collection Practices Act" simply does not apply because the P.U.D. was not working as a debt collector, it was simply trying to collect its own debts. 15 U.S.C. § 1692a(6). "...The FDCPA does not apply to original creditors -- such as defendant -- collecting their own debts, effectively exempting them from liability under the FDCPA." Thomas v. Americredit Fin. Corp., 2007 U.S. Dist. LEXIS 70192 (N.D. Cal. Sept. 11, 2007).

D. CONCLUSION

For the reasons stated above, this Court should deny further review of the trial court's decision.

DATED this 20th day of January, 2011

Respectfully submitted,

  
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