

NO. 62952-2-1

IN THE COURT OF APPEALS OF THE STATE  
OF WASHINGTON, DIVISION I

**DOUGLAS J. KEHRES, a single person, and  
JEANNETTE M. KEHRES, a single person,**

**Appellants,**

**vs.**

**GREGORY L. URSICH and HEIDI J.  
GASSMAN, Individually and as attorneys  
for LINVILLE URSICH, PLLC, a law firm  
doing business in the State of Washington,**

**Respondents.**

FILED  
COURT OF APPEALS DIV. I  
STATE OF WASHINGTON  
2009 OCT 19 PM 4:06

**BRIEF OF APPELLANTS**

**Address:**

**20219 – 75<sup>th</sup> Avenue N. E.  
Kenmore, WA 98028-2013  
Telephone: 425-481-9564**

**Douglas J. Kehres  
Appellant pro se**

**20219 – 75<sup>th</sup> Avenue N. E.  
Kenmore, WA 98028-2013  
Telephone: 425-481-9564**

**Jeannette M. Kehres  
Appellant pro se**

## TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	2
III. STATEMENT OF CASE	4
IV. ARGUMENT	7
V. CONCLUSION	1

## **TABLE OF AUTHORITIES**

	<b><u>PAGE</u></b>
<b>WASHINGTON CASES</b>	
King Aircraft Sales, Inc. v. Lane	10
<b>RULES AND REGULATIONS</b>	
CR 56 (F)	3
<b>OTHER AUTHORITIES</b>	
United States Constitution, Amendment VII	3
Washington State Constitution, Article I, Section 21	4
Washington State Constitution, Article I, Section 3	10

## I. INTRODUCTION

Appellants, Douglas J. Kehres and Jeannette M. Kehres (known as, Kehres) retained Heidi J. Gassman and Gregory L. Ursich of Linville Ursich, PLLC (known as, Ursich) by agreement to represent Kehres in a lawsuit filed by Joseph Cort and Warren Anderson for performance of an agreement to sell Kehres' real property under a Vacant Lot Purchase and Sale Agreement (known as, VLP&SA), which was executed on September 26, 2002 with a closing date of September 30, 2003. unless seller granted buyer extension of the closing date. The extension would be for six (6) months to March 30, 2004. Payment for extension fee was paid on September 26, 2003.

A second six (6) month extension fee would have to be paid on March 26, 2004, to allow four (4) days to prepare closing documents for a closing on March 30, 2004. Buyer did not pay the extension fee until March 30, 2004. A Summary Judgment Order by Judge Robert L. Alsdorf ordered Kehres to accept the late extension fee, as closing was on 30<sup>th</sup> of September, 2004. Judge Alsdorf recognized the VLP&SA limiting extensions to two. Kehres has personal knowledge of the judge's order.

The buyer did not complete a Boundary Line Adjustment (known As, BLA) until February 01, 2005. Kehres retained Ursich to enforce the

the VLP&SA, which expired on September 30, 2004 along with the court order. The buyer did not purchase the real property on or before VLP&SA closing date of September 30, 2004. Kehres had performed the VLP&SA.

Rather than, enforcing the VLP&SA and Judge Alsdorf's order of July 30, 2004, Ursich negotiated with the buyer's attorney to determine the closing date to be "irrelevant" and to approve a BLA prepared by the buyer, which was not consistent with the VLP&SA nor the court order. Ursich did not consult or obtain consent from Kehres before taking these actions. Ursich agreed with opposing attorney that the court order did not require the buyer to purchase the property. Ursich's actions gave the buyer opportunity to purchase the real property at his will. It has been five (5) years from expiration date of the VLP&SA. The buyers have not purchased Kehres' real property to date. CP 150

Judge Alsdorf did not intend for the VLP&SA to continue indefinitely.

## **II. ASSIGNMENTS OF ERROR**

A. Superior court judge erred at Summary Judgment for not continuing the matter to permit affidavits to be presented, depositions to be taken, discovery to be had, or to make such other order as would be just under the circumstances.

**CR 56(f) When Affidavits Are Unavailable, states:**

“Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.”

Kehres advised the court at Motion to Strike held on the same day as Summary Judgment hearing about a computer problem which caused Kehres' affidavits to be unavailable for response to summary judgment motion. Judge Shaffer allowed Kehres' response.

Kehres was not able to complete argument at Summary Judgment on December 31, 2008 in opposition to Ursich's argument, Kehres had contracted strep throat and lost voice. Kehres was not aware of her medical condition. If she had known, she would asked for continuance.

B. Superior Court Judge erred in refusing to acknowledge Kehres' proposed order for discovery and trial.

**The United States Constitution, Amendment VII, Trial By Jury in Civil Cases, states as follows:**

“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, the according to the rules of the common law.”

**The Washington State Constitution, Article I, Section 21,  
Trial By Jury concurs and states as follows:**

“The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.”

Kehres, in their proposed order in response to Ursich’s Motion to Dismiss, requested the court for discovery and trial.

This is an appeal of Judge Shafer’s decision where she dismissed all plaintiff’s claims against all defendants, primarily because Kehres was unable to argue at oral argument for reasons explained above. RP

**III. STATEMENT OF THE CASE**

In the underlying case, King County Superior Court cause number 04-2-06341-8 SEA, Kehres had been ordered to perform the VLP&SA . The purchasers had asked the court for this, after they were in default. Kehres was justified to believe they would perform.

The proximate cause of Kehres being required to sell real property without the buyer having to perform to purchase the real property is a direct result of Ursich deciding the closing date to be irrelevant CP 150.

The VLP&SA did not require Kehres to grant extensions—only to give Kehres the option to do so. Kehres did grant first extension when

the buyers paid the extension fee on September 26, 2003. The extension was from September 26, 2003 to March 26, 2004. The buyers did not pay a fee on March 26, 2004. The difference of the four days from the 26<sup>th</sup> to the 30<sup>th</sup>, the closing date, was to allow time to prepare closing documents when another extension was not available. The VLP&SA limits Kehres to two six (6) month extensions from September 30, 2003.

Rather than requesting a second extension and paying the fee, the buyers filed suit on March 24, 2004, alleging Kehres had refused to sign a Boundary Line Adjustment (BLA) prepared for Kehres and by letter of March 18, 2004, Kehres indicated to the buyers that he would not perform the VLP&SA.

There was no BLA for Kehres to execute on March 16, 2004. The letter dated March 18, 2004 referred to Kehres not paying the buyers \$275,000.00 for the development plat, which was an offer by the buyers to Kehres.

The buyers filed for Summary Judgment before Judge Alsdorf of Superior Court on July 30, 2004. Judge Alsdorf ruled Kehres must accept the late second extension fee paid on March 30, 2004 and to perform the VLP&SA to close. The summary judgment order does not exclude or extend the closing date. CP 98

Judge Alsdorf;s summary judgment order states:

“Ordered that the Defendant, Douglas J. Kehres, shall specifically perform the Vacant Land Purchase and Sale Agreement between him and the Plaintiffs and shall sell the real property described in the Complaint for Specific Performance and for Damages herein, as provided in the Vacant Land Purchase and Sale Agreement dated September 25, 2002, to the Plaintiffs for the purchase price of four hunder thousand dollars (\$400,000.00);

it is further

Ordered that Douglas J. Kehres shall take any and all necessary action to perform the Vacant Land Purchase and Sale Agreement; Including but not limited to, signing the boundary line adjustment prepared on Plaintiffs’ behalf and otherwise cooperating and performing the Agreement and proceeding to close the purchase and sale of the real property; . . . “

On February 01, 2005, the buyers advised Kehres the BLA was now completed. Kehres retained Linville Ursich, PLLC with Gassman and later being joined by Ursich. Ursich took over all negotiations with the buyers’ attorney. Kehres offered to write a new VLP&SA with the buyers refusing. Ursich did not litigate to enforce the original closing date of the original VLP&SA and Judge Alsdorf’s order.

Subsequently, Ursich approved a BLA prepared by the buyers which was not consistent with the VLP&SA or Judge Alsdorf’s order. Ursich did not receive consent or agreement from Kehres to approve any BLA , nor did Kehres agree the VLP&SA closing date to be irrelevant.

Ursich’s actions were the proximate cause of Kehres showing

intent to perform the VLP&SA.

Kehres refused to approve Ursich's actions. Ursich refused to represent Kehres at a contempt proceeding filed by the buyers. Now, Ursich states the he could have represented Kehres until May 3, 2005. The court would not let Ursich withdraw before that date, even though he told Kehres that he intended to withdraw sooner. After Ursich had advised Kehres of intention to withdraw, Kehres had interviewed several attorneys. Finally, Kehres was able to retain John W. Hathaway on April 26, 2005 for representation in the underlying case referred to above.

#### **IV. ARGUMENT**

At summary judgment hearing in the malpractice lawsuit, Case number 08-2-13428-8 SEA, being appealed here under case number 62952-2-1, Ursich argued Kehres was given ample time to prepare and retain an attorney to support the malpractice claims.

Kehres found it difficult to interview and retain an attorney from October through December, 2008. Most attorneys were finishing up the year with current clients and were too busy for new legal work. The Holidays shortened time allowed. Seattle weather caused transportation difficulties and closed many offices.

Kehres intended to retain Attorney John W. Hathaway, but he was

in depositions, trial, and on vacation. Attorney Hathaway represents Kehres in the underlying case. Another problem is financial. Kehres has spent over \$100,000.00 to correct Ursich's actions regarding the VLP&SA closing date and approval of a BLA which was not consistent with the VLP&SA and Judge Alsdorf's order. Kehres was unable to accumulate a retainer fee with all other end of the year expenses.

At summary judgment hearing, Ursich argued that Kehres had not signed their response under oath and did not present affidavits to support their response in Motion to Strike Kehres' response.

Kehres explained to Judge Shaffer that Kehres' computer had failed and some documents were lost. Kehres had to file the part of all documents that were available. Attorney Rosenberg had denied Kehres a continuance to file response when the computer problem was explained to him by Kehres—stating that a failed computer was not a good excuse to continue the matter. Kehres needed only a few days. Kehres was forced to file the retrieved portion of the response, losing affidavits.

Although, Kehres did not sign the response under oath, Kehres had personal knowledge of all events and documents set forth in their response. From February, 2005 through April, 2005, Ursich knew Kehres had personal knowledge—Ursich's motion to strike was not necessary.

Even in this economic downturn in the housing market, Kehres' real property has increased two-fold since 2002. Further, developers are not purchasing vacant property now. Kehres had opportunity to sell the real property when the market was high. The amount of the increased value would have to be determined by a real estate expert at trial. This could not been done in the time before summary judgment.

Ursich alleges that Kehres did not want to perform the VLP&SA. Kehres alleges that the VLP&SA had expired on September 30, 2004 and the buyers did not purchase the property. Kehres alleges the VLP&SA was not valid in February, 2005 and the buyers refused to write a new VLP&SA, which was offered by Kehres. Judge Alsdorf's order did not extend or exclude the closing date—the order only states “per VLP&SA.”

Kehres entered into the contract/agreement with Ursich in good faith—expecting to be professionally represented. Ursich was not skillful, diligent or cautious in negotiation with opposing attorney. Ursich owed a duty of care to Kehres. Ursich agreed with opposing attorney where the evidence was clear that the VLP&SA was not valid and the BLA was not consistent with the VLP&SA—per Judge Alsdorf's order.

This is a matter of law with an agreement to represent Kehres by legal professionals. This is not a lawsuit of equity. CP132

**King Aircraft Sales, Inc. v. Lane, 68 Wn. App., 706, 846 P 2d, 550 (1993).**

“In civil actions, the right to jury trial exists where the action is purely legal in nature but not where the action is purely equitable in nature.”

Ursich did not have right to give any part of Kehres’ real property by approving the BLA which was not consistent with the VLP&SA and Judge Alsdorf’s order.

Ursich did not have right to find the closing date of the VLP&SA irrelevant. The closing date of a purchase and sale agreement for real property is significant.

**The Washington State Constitution, Article I, Section 3—Personal Rights states,**

“No person shall be deprived of life, liberty, or property without due process of law.”

In this case, Ursich took it upon himself to change the VLP&SA by deciding the closing date was “irrelevant:” without consultation or consent of the property owner (Kehres). CP 150

Further, Ursich took it upon himself to approve a BLA that was not consistent with the VLP&SA executed by the seller and the buyers, in favor of the buyers, without consultation or consent of the seller (Kehres).

Further, Judge Alsdorf's summary judgment order does not extend or exclude the closing date, but orders performance of the VLP&SA by Kehres. The second part of the order states the BLA to be per VLP&SA.

These actions by Ursich caused the trial court to believe Kehres had intent to change the VLP&SA. Kehres did not have such intention.

Also, these actions by Ursich has caused the underlying case to be in court for many years without a conclusion. Many offers to settle have been given to the buyers, but they would not "budge" from the actions by Ursich to change the VLP&SA.

## **V. CONCLUSION**

Evidence set forth in the agreements and orders herein indicate that Ursich did not represent Kehres in a professional manner, agreeing with opposing attorney to change a real property sale agreement without the consent of Kehres and without allowing Kehres notice of the changes until after they were completed.

Depositions would clear up any doubts on the part of Ursich as to Kehres' claims. Ursich could explain reason for determining VLP&SA closing date irrelevant. Also, the question why Ursich did not seek consent of Kehres before approving a BLA.

Kehres would be able to call witnesses, attorneys, and others, who

are familiar with agreements for the sale of real property and a real estate expert familiar with values of real property. Both parties would be able to cross examine all witnesses called to testify.

The United States Constitution guarantees a jury trial in civil actions. The Washington State Constitution supports this guarantee. Court rule for superior court where affidavits are unavailable, requires a continuance, depositions, discovery, and any order which is just under the circumstances.

Kehres does not request decision from this court in the underlying case which is set for jury trial on November 16, 2009. Kehres requests this court to remand this case to superior court for jury trial to ascertain through depositions and witnesses the true facts and to allow Kehres rights guaranteed by constitutional law.

Kehres does not have the expertise to quote precedent cases and can only rely on rule of the court and constitutional law in this matter. Kehres acknowledges the fact that they are at a disadvantage not having an attorney to represent them at this point. However, today Kehres does intend to ask an attorney to represent them in support of this malpractice lawsuit.

DATED this 19<sup>th</sup> day of October, 2009.

Respectfully submitted,

  
\_\_\_\_\_  
**Douglas J. Kehres, Appellant pro se**

  
\_\_\_\_\_  
**Jeannette M. Kehres, Appellant pro se**