

66533-2

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No. 66533-2-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

JIMI LOU STEAMBARGE,

Appellant,

v.

BELLEVUE SQUARE, LLC,

Respondent,

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

REPLY BRIEF
(APPELLANT)

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¹ APPELLANT RESPONSE TO RESPONDENT BRIEF

I. INTRODUCTION

Respondent opens in their Introduction that “Bellevue Square, LLC (“Bellevue Square”) owns and operates a shopping center. This statement is only the beginning of many false statements that seem to be a regular occurrence in the business doings of Bellevue Square and/or Kemper Development Company. The truth is that Kemper Freeman, Jr. and/or Kemper Development Company owns Bellevue Square; this is public knowledge. Throughout the case and again in their Brief Introduction, the Respondent has painted a very different picture and timeline of what actually occurred between the parties and uses many untruths to do so.

What started as a long-term solicited and skilled courtship by Bellevue Square to acquire Steambarge as 4-month holiday pop-up tenant has turned disastrous and life-changing for the Appellant, where not only has her health and personal life greatly suffered, but she is now penniless due to her dealings with the Respondent and the lawsuit that followed.

Respondent’s sales pitch always had the common theme of “you should come to Bellevue Square” and “this is why!” Appellant only entered into the agreement based on good faith and with the expectation of the same from Bellevue Square, LLC and/or Kemper Development Company. Appellant also had the expectations that Respondent would

fully perform. The contract was based and derived on a supposed collective purpose, in addition to facts and circumstances, but it proved to be grossly misrepresented in a fraudulent manner. Material facts formed the basis upon which the Lease in question was constructed and Ms. Steambarge would not have entered into the agreement without the proposed intent of the parties to be reasonable and as intended.

Appellant's business was not simply unsuccessful, as the Respondent would like one to believe. In a meeting prior to Bellevue Square filing a lawsuit against Steambarge, counsel David Nold stated to Ms. Steambarge, "Bellevue Square is Golden, why would they need to listen to what you have to say?" It is this egotistical attitude and position that makes it apparent that the Respondent operates with apparent impunity as if they are exempt. Respondent behaves in a manner, which says that they are above justice. For the Respondent to seek equity they must come from a place of equity with clean hands. Never did Bellevue Square and/or Kemper Development Company attempt to resolve the disagreement between the parties in good faith. Never did Bellevue Square approach Steambarge with the idea of resolving the matter outside of a courtroom. Never did the Respondent see or take accountability for their role in the failed venture.

From the beginning, Appellant approached Respondent in good

faith from a place of trust and with only the hope for amicable resolve. Appellant has stood her ground from the beginning based on the same theories. Her position has never wavered. Of course, the challenges of representing one-self pro se are apparent and her lack of legal knowledge is obvious, as one would expect. It is also quite apparent that Respondent and/or their counsel's typical mode of operation is that of strong-arming tenants, attempting to acquire a Confession of Judgment and when not successful to immediately file a lawsuit. On more than one occasion, including before the court, Respondent's counsel has commented on the fact that Appellant filed a counterclaim, as if she did not have the right to defend herself and as if they, Bellevue Square and/or Kemper Development Company, could do no wrong. It is rooted in "how dare you challenge us." Respondent is very aware that Appellant is penniless and that there is nothing to financially gain through this lawsuit and that Appellant would be unable to afford legal counsel, but clearly moved forward out of anger or/and or to constantly create an income for Bellevue Square's long-time and permanent counsel. There is no other viable reasonable explanation.

This case is extremely multi-layered and testimony of numerous parties, including that of Respondent, can and will attest to the facts to disprove the Respondent's position when they have their opportunity to be

heard by the trier of fact. Bellevue Square, LLC vs. Jimi Lou Steambarge should not have been decided in a Summary Judgment Motion as the Appellant is entitled to due process where reasonable minds will reach a different conclusion than that of the Respondent after considering the evidence and testimony in its entirety. When reasonable minds differ, Summary Judgment should be denied.

II. RESPONSE TO RESPONDENTS STATEMENT OF FACTS AND ARGUMENTS

COMMENTS ON INTEGRATION CLAUSE

Bellevue Square states that “no one at Bellevue Square promised Ms. Steambarge any particular outcome or level of success in her operation,” which is false. Appellant has and continues to proclaim that the truth can only come from the detailed testimony of the true parties involved, which includes Respondent’s employee Miss Stephanie Neil who was Ms. Steambarge’s contact throughout the entire relationship. Bellevue Square is aware of this and has purposely sheltered and removed Neil from the formula, where she is the only Bellevue Square and/or Kemper Development Company employee with first-hand knowledge and Steambarge’s contact from beginning till the end. Again, in the

Respondent's Brief, they fail to even whisper her name and provide no objection to the Appellant's claim and proclamation. Appellant is unaware of what an Integration Clause even is, but is pretty sure it is not to be used for the purpose of saying whatever you want to simply get what you want. Again, Ms. Steambarge would not have entered into the agreement without the proposed intent of the parties to be reasonable and as intended.

CONFESSION OF JUDGMENT DISPUTE

Bellevue Square did not ever approach Steambarge in good faith. They only offered a Confession of Judgment where Appellant would sign and state that she owed \$167,682, pay \$10,000 immediately, pay \$2,000 every month for 60 months and stay open until March 31st. Steambarge did not sign the document, e-mailed to her by Stephanie Neil, as it was not true and she was unable to perform the financial portion of the document. Bellevue Square gave no other options. Furthermore, it is Ms. Steambarge that repeatedly approached Bellevue Square and/or Kemper Development Company in an attempt to fairly resolve the dispute prior to litigation. Respondent's Brief states that Ms. Steambarge vacated the Premises on or about March 29, 2010, but that she did not remove her store signage. In truth, Bellevue Square removed and damaged Steambarge's sign on March 25, 2010, prior to her departure and without consent. Bellevue not only

claims that they did not damage the sign, but that Steambarge never claimed there was damage to her sign. This is untrue. Both Ms. Steambarge and Mr. Axel Duerr provided testimony through their declarations regarding the damage to the sign (CP 82-86, 87-115, 140-151). This argument was raised in the trial court, prior to appeal.

BELLEVUE SQUARE SUES STEAMBARGE

Respondent proposes the idea that they had no choice to file a lawsuit against Ms. Steambarge, but this is not the case. When Bellevue Square and/or Kemper Development Company cannot get what it wants, whether they are right or wrong, they simply file a lawsuit. In 2009 and 2010 they (Bellevue Square) filed nearly twenty lawsuits, as the Plaintiff, against their tenants. It is difficult to believe that one can be wronged that often. Truly there was no need for a lawsuit between the parties and resolve could have been found without lengthy and expensive litigation.

RESPONDENTS FOCUS ON EXTENSIONS

Appellant is not sure why Respondent focused on the Extensions or Continuances requested by Appellant, as each incident, regardless of the issue, was granted by the court and Steambarge should not be punished for such. Steambarge has represented herself, which has been more than

challenging and has left her at a great disadvantage.

LACK OF RECORDINGS OF PROCEEDINGS

Respondent states, “there is no requirement in Washington law or the court’s rules that the oral arguments on motions for summary judgment be recorded or transcribed.” Again, Respondent attempts to twist words. RCW 2.32.050 may not specify each type of case that must be or not be recorded, but clearly states in RCW 2.32.050 (2) that “it is the duty of the clerk of the supreme court, each court of the court of appeals, and of each county clerk for each of the courts for which he or she is a clerk to record the proceedings of the court.” Contrary to Respondent’s statement, a transcript of the hearing would make a difference to the appeal because Appellant’s statements and position would have been supported.

Respondent repeatedly claims that Appellant did not provide testimony or attempt to challenge the calculation of damages, which is the farthest thing from the truth. Appellant strongly attempted to clearly present her case, documents and numerical charts to support her arguments, but was quickly and unfairly cut-off mid-sentence by the presiding judge. Appellant never had the real chance to present her case and was denied due process.

WHO IS LANDLORD OR REAL PARTY OF INTEREST?

Again, in an attempt to twist words, Respondent blatantly rewords a sentence in the Lease directly created by them and/or their counsel. 11.3 of the Lease plainly states that the “Landlord, Kemper Development Company...shall be named as an additional insured.” Nowhere in that sentence does it state “that the tenant must name two identified parties, the Landlord (Bellevue Square, LLC) and Kemper Development Company, as well as any other parties Bellevue Square may designate,” as the Respondent attempts to reword and claim in its Brief. It is clear that 11.3 of the Lease names Kemper Development Company as Landlord, without any mention of Bellevue Square.

III. CONCLUSION

Obviously, nearly every item, statement or claim between the parties could be picked apart and drawn out as he said / she said in opposition of each other, but Appellant truly does not have that legal ability. What is clear between the two Briefs is that a significant dispute of material facts exists between Bellevue Square and Steambarge. In the dispute between these two parties an exponential number of material facts exists and are in dispute and thus Summary Judgment should have been denied and Appellant should be entitled to a fair trial.

According to CR 56 a summary judgment can only be granted if

there are not issue as to any material facts. In Capital Hill Methodist Church of Seattle v City of Seattle, the court stated that Washington's rule 56 "was adopted almost verbatim from Federal Rule of Civil Procedure 56, 28 U.S.C.A" and quoted that the procedure (of summary judgment) "is not to be used as a substitute for a regular trial of cases in which there are disputed issues of material fact upon which the ultimate outcome hinges, and it should be invoked with due caution to the end that litigants may be afforded a trail where there exists between them a bona fide dispute of material facts." 52 Wash.2d 359, 363, 324 P.2d 1113, 1117 (1958).

Pursuant to CR 56, and for the above stated reasons, Appellant respectfully requests this Court to reverse the lower courts decision and allow the Appellant due process. It is also requested that the court reverse any other actions taken by Respondent and to award Appellant her reasonable fees and costs incurred.

Respectfully submitted this 30th day of May, 2012.

Jimi Lou Steambarge



Appellant, Pro Se

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BELLEVUE SQUARE, LLC,

Respondent,

Case No: 66533-2-1

RE: King County No: 10-2-12868-9 SEA

vs.

DECLARATION OF SERVICE

JIMI LOU STEAMBARGE d/b/a ALLUSIA,

Appellant.

I hereby certify that on May 30, 2012 I caused to be served the following documents:

A. Appellant's Response to Respondent's Brief

B. Declaration of Service.

To:

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Nold & Associates
Bellevue Place, Suite 930
10500 NE 8th Street
Bellevue, WA 98004

 First Class Mail, Postage Prepaid

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I declare under penalty under the laws of the state of Washington that the foregoing is true and correct.

Dated this 30th of May 2012 at Seattle, WA.


JIM LOU STEAMBARGE