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No. 74566-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

INGLEWOOD HOLDINGS, LLC, et al.,

Appellants,

v.

JONES ENGINEERS, INC., PS, et al.,

Respondents.

BRIEF OF APPELLANTS

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it entered the “Order Granting Defendants’ Motion for Summary Judgment and Dismissal” dismissing Plaintiffs’ complaint to quiet title to the subject properties and claims of slander of title and negligence where there is strong undisputed evidence to support the complaint to quiet title and the claim for slander of title, and the amendment of the subject judgment to delete reference to “Stebner Entities” did not render the claims moot.
2. The trial court abused its discretion in denying the request for a continuance pursuant to CR 56(f) as the basis for denying the request was not supported by law.

II. STATEMENT OF THE CASE

In 2008, Jones Engineers, Inc., PS, (Jones Engineers) sued Derek Stebner (Stebner) and Canyon Holdings, Inc., (Canyon Holdings), as well as several unnamed “Doe” persons and entities, and a non-existent “Stebner Entities” (a generic reference to potentially liable companies owned or controlled by Derek Stebner) for unpaid engineering services related to a

failed development project.¹ Canyon Holdings was the owner of the property to be developed.²

At trial, Stebner, Canyon Holdings and Plantation Builders, LLC, (Plantation Builders) were found liable for the unpaid engineering services.³ At trial, Plantation Builders was identified as having been involved in the development project and having made payments to Jones Engineers.⁴ No other potentially liable companies owned or controlled by Stebner were ever served with process or otherwise placed under the jurisdiction of the court, or identified at trial and included in the judgment.⁵ In the judgment entered after trial, Jones Engineers included as a judgment debtor “Stebner Entities” in spite of the court’s finding that there was no such company.⁶

A month after entry of the judgment, Respondents to this appeal, Jones Engineers, Inc., et al., (collectively, “Jones”) recorded the judgment with the Whatcom County Auditor and included on the “Coversheet to Judgment” as “Grantors” and therefore judgment debtors of the judgment lien the seven Appellants to this appeal, Inglewood Holdings, LLC, et al.,

¹ CP 76-86 (Exhibit A to Decl. M. Jones, Complaint to Foreclose upon Lien).

² CP 107 (Exhibit B to Decl. of M. Jones, Findings and Conclusions, p. 4, para. 7).

³ CP 101-102 (Exhibit D to Decl. of M. Jones, Notice of Appeal, Ex. A, Judgment).

⁴ CP 107 (Exhibit B to Decl. of M. Jones, Findings and Conclusions, p. 4, para. 11).

⁵ CP 101-102 (Exhibit D to Decl. of M. Jones, Notice of Appeal, Ex. A, Judgment).

⁶ CP 125 (Exhibit E to Decl. of M. Jones, Unpublished Opinion, p. 9).

(collectively, “Inglewood Holdings, LLC, et al.”), and listed fifty properties owned, or believed to owned by the listed companies.⁷

The filing of the judgment lien created a cloud on the titles to the properties and negatively affected the companies, which were owned or controlled by Stebner. The negative effects included added difficulties or obstructions to developing the properties and potential or actual contractual defaults on the loan or financing agreements, no less than four of which resulted in otherwise avoidable foreclosures of the properties, either through refinancing or sale, resulting in losses in excess of several hundred thousand dollars.⁸

The 2008 case was appealed and in a decision dated July 28, 2014, after generally affirming the decision of the trial court, the Court of Appeals reiterated that there was no company named Stebner Entitites and remanded the case back to the trial court to remove the reference to “Stebner Entities” from the judgment.⁹

In spite of the Court of Appeals decision, Jones did not take action to amend the judgment until September 4, 2015,¹⁰ and never has any action

⁷ CP 226-240 (Exhibit I to Decl. of D. Stebner, Auditor Filing, Coversheet to Judgment and Judgment).

⁸ CP 219-22 (Decl. of D. Stebner, pgs. 1-4)

⁹ CP 125 (Exhibit E to Decl. of M. Jones, Unpublished Opinion).

¹⁰ CP 127-28 (Exhibit F to Decl. of M. Jones, Amended Judgment).

been taken by Jones to remove or correct the wrongfully filed judgment lien.¹¹

In April of 2015, Inglewood Holdings, LLC, et al. filed a lawsuit against Jones to quiet title to the subject properties and for slander of title and negligence.¹² In response, Jones moved for summary judgment arguing, inter alia, that the claims were moot based on the amendment of the judgment, or that the recording of the judgment and coversheet listing Inglewood Holdings, LLC, et al., and their properties was not improper or did not create a cloud on the title to the properties.¹³ Inglewood Holdings, LLC, et al. opposed the motion and requested a continuance to conduct additional discovery pursuant to CR 56(f).¹⁴

The trial court granted Jones' motion¹⁵ and Inglewood Holdings, LLC, et al. now appeal the trial court's ruling granting Jones' motion for summary judgment and denying their request for a continuance pursuant to CR 56(f).¹⁶

¹¹ CP 223 (Decl. of D. Stebner, p. 5)

¹² CP 3-33 (Complaint).

¹³ CP 52-71.

¹⁴ CP 207-218

¹⁵ CP 477-79

¹⁶ CP 516-522

III. ARGUMENT

A. There is Strong Undisputed Evidence to Support the Complaint to Quiet Title to Property and the Claim of Slander of Title

It is respectfully suggested that the above “Statement of the Case” is a fair statement of the undisputed facts in this case.

“[I]n situations where, though evidentiary facts are not in dispute, different inferences may be drawn therefrom as to ultimate facts such as intent, knowledge, good faith, negligence, et cetera, a summary judgment would not be warranted. *Preston v. Duncan*, 55 Wn.2d 678, 349 P.2d 605 (1960).

From the undisputed facts, it is suggested that the following could be reasonably inferred with regard to Jones’ intent, bad faith, malice, and the like:

Jones was attempting to collect on an unpaid debt from a development project gone bad. Jones was concerned about the ability to collect on the debt and threw a wide net for potentially liable parties. At trial Jones was unable to identify any liable party other than Stebner, Canyon Holdings and Plantation Builders. In spite of knowing that Stebner Entities was not a company, not a thing, Jones included the name on the

judgment as a judgment debtor. This was all done as part of Jones' greater scheme to collect on the debt. The very next month after entry of the judgment, Jones had research and identified multiple companies owned or controlled by Stebner that were never involved with Jones or the development project and were never named in the lawsuit, served with process or identified at trial, as well as dozens of real properties believed to be owned by those entities. Jones then filed the judgment and "Coversheet to Judgment" wrongfully and deceptively listing the companies, as "Grantors" and judgment debtors of the judgment lien, and the fifty properties believed to be owned by those companies as being subject to the lien. This was at best a purposefully confusing, misleading and false legal document purporting to constitute a lien against these properties, the sole purpose of which was to cloud title to the properties so that Jones could later extort or coerce payment on the unpaid, but completely unrelated, debt from companies believed to be owned or controlled by Stebner, but clearly not subject to any liability for the debt or included in the subject judgment.

Slander of title is defined as: (1) false words; (2) maliciously published; (3) with reference to some pending sale or purchase of property; (4) which go to defeat plaintiff's title; and (5) result in plaintiff's pecuniary loss. *Rorvig v. Douglas*, 123 Wn.2d 854, 859, 873 P.2d 492 (1994). It seems clear that Jones' actions constitute slander of title. Jones' actions are

similar, and in fact more egregious, than the actions of the plaintiffs in *Richau v. Rayner*, 98 Wn.App. 190, 988 P.2d 1052 (2000), where the court awarded damages and attorney fees related to an unjustified filing of a lis pendens against a property the title to which was not at issue in the subject lawsuit. *Id.* (relying on RCW 4.28.328).

At the very least Jones' actions should provide sufficient support for a claim of slander of title to survive summary judgment.

It is also worth noting that while Jones coyly suggests that their actions were not an attempt to improperly cloud title to the subject properties, they continue to consistently and repeatedly assert that they have a valid claim against Inglewood Holdings, LLC, et al., for the unpaid debt based on Jones Engineers' claim against "Stebner Entities" in the previous lawsuit. This is in spite of the fact that the Court of Appeals felt that the inclusion of "Stebner Entities" in the earlier judgment was so clearly erroneous and improper, it referred to the term's inclusion in the judgment by the trial court as simply "an inadvertent error".¹⁷ Even a cursory review of Jones' answer to the complaint or their response to requests for admission makes it clear that they continue to attempt to assert a claim, judgment and judgment lien against any companies ever owned or controlled by Stebner

¹⁷ CP 125 (Exhibit E to Decl. of M. Jones, Unpublished Opinion, p. 9).

in spite of the fact that such companies never had any involvement whatsoever, and were never identified, in the past litigation.¹⁸

As concluded by the Supreme Court of Washington in *Crowley v. Byrne*, 71 Wn. 444, 447, 129 P. 113 (1912), in an action to quiet title to property, a party cannot be heard to say that a recording does not constitute a cloud upon the title to the property and at the same time claim an interest thereunder.

It is also not understood how an assumption can be made that the amendment of the subject judgment to remove reference to “Stebner Entities” removes the need to quiet title to the properties. It is the original judgment and the purposefully misleading coversheet specifically listing Inglewood Holdings, LLC, et al., as Grantors and judgment debtors of the judgment lien, and the listing of the 50 specific real properties in the recording that clouds the title to the properties, and to this date Jones has refused to do anything to correct the improper filing. The only evidence that has been presented regarding the issue of the clouded titles asserts, not unexpectedly, that the filing has created, and continues to create, a cloud on the title to the properties causing damage to the companies, which clearly was the intention of Jones.¹⁹ What other reason could there be for such a

¹⁸ CP 42-51 and 256-57 and 263-276 (Decl. of D. Pharris, p. 2-3 and Exhibit 2)

¹⁹ CP 219-22 (Decl. of D. Stebner, pgs. 1-4)

blanket filing? There has been no evidence presented, and quite frankly there can be no logical assumption, that the cloud on the title to the properties has changed simply by removing the term “Stebner Entities” from the unrecorded amended judgment.

As explained by this court in *Robinson v. Khan*, 89 Wn.App. 418, 948 P.2d 1347 (1998):

A cloud upon a title is but an apparent defect in it. If the title, sole and absolute in fee, is really in the person moving against the cloud, the density of the cloud can make no difference in the right to have it removed. Anything of this kind that has a tendency, even in a slight degree, to cast doubt upon the owner’s title, and to stand in the way of a full and free exercise of his ownership, is [] a cloud upon his title which the law should recognize and remove.

Id. (quoting the Michigan Supreme Court in *Whitney v. City of Port Huron*, 88 Mich. 268, 272, 50 N.W. 316 (1891).)

Contrary to the trial court’s apparent holding, a cloud upon title has also been defined to include an encumbrance which is actually invalid or inoperative, but which nevertheless impairs the title to property. *Robinson v. Khan*, 89 Wn.App. at 423 (citing 65 Am.Jur.2d *Quieting Title* § 9 (1972)).

Attempting to understand the trial court’s decision in this matter in some ways feels like a trip down the rabbit hole. Jones continues to emphatically assert a valid claim and judgment against Inglewood

Holdings, LLC, et al. Yet the Court of Appeals has made it clear that Jones neither has, nor ever had, a claim against other companies owned or controlled by Stebner and that the reference to “Stebner Entities” in the earlier judgment was simply an “inadvertent error” by the trial court. Nonetheless Jones recorded with the Whatcom County Auditor a judgment and cover sheet against Inglewood Holdings, LLC, et al., listing specific properties which they owned, and has never taken any steps to rectify the recording. It is undeniable that the intent of Jones was to affect the title to the properties in an attempt to collect the claimed debt. Inglewood Holdings, LLC, et al. has presented evidence that, as planned by Jones, the recording of the documents has clouded the title to the properties. In spite of these clear, unequivocal facts, the trial court nonetheless ruled that there is no need to quiet title to the properties and there has been no slander of title because Jones’ intent is irrelevant and there should be no cloud created by the improper filing. Going even further, the trial court believed that such issues were appropriately decided on summary judgment.

As set forth and discussed above, such a ruling is, respectfully, in error.

B. The Trial Court Erred in Denying the Request for a Continuance Pursuant to CR 56(f)

Inglewood Holdings, LLC, et al. requested a continuance of the hearing on Jones' motion for summary judgment pursuant to CR 56(f) to conduct additional discovery regarding Jones' "knowledge, intent, motive and bad faith" concerning the filing of the judgment liens against the subject properties, which they felt were relevant to the slander of title claim.²⁰ The trial court denied the motion ruling that additional discovery was unnecessary because the filing of the judgment, and presumably the purposefully confusing and misleading "Coversheet to Judgment", was simply not unlawful or tortious regardless of the intent of Jones. The decision of the trial court to deny a motion for a continuance to conduct further discovery pursuant to CR 56(f) is reviewed for an abuse of discretion. *MRC Receivables Corp. v. Zion*, 152 Wn.App. 625, 629, 218 P.3d 621 (2009). If, as suggested by Inglewood Holdings, LLC, et al., it was the intent of Jones in filing the judgment and coversheet to wrongfully or maliciously cloud the titles to properties owned by companies against which Jones has no proper claim, and such intent would be relevant to the claim of slander of title,

²⁰ CP 208, 212 and 256 (Decl. of D. Pharris, p. 2)

then the trial court's denial of the motion for continuance was without a proper basis and therefore an abuse of discretion and should be reversed.

IV. ATTORNEY FEES, EXPENSES AND COSTS

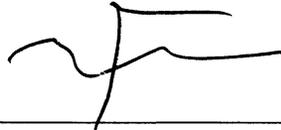
Inglewood Holdings, LLC, et al., requests an award of reasonable attorney fees and expenses as the prevailing party on appeal pursuant to RAP 18.1 and *Rorvig v. Douglas*, 123 Wn.2d 854, 873 P.2d 492 (1994), or other applicable law; and costs pursuant to RAP 14.4.

V. CONCLUSION

For the reasons stated herein, this Court should reverse the decision of the trial court granting Jones' motion for summary judgment, and deny Jones' motion, or in the alternative, remand to the trial court with direction to the court to grant Inglewood Holdings, LLC, et al.'s request for a continuance pursuant to CR 56(f) to conduct further discovery prior to a new hearing on Jones' motion for summary judgment.

RESPECTFULLY submitted this 27th day of April 2016.

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APPENDIX

DECLARATION OF SERVICE

On said day below, I hand delivered a true and accurate copy of Appellants' Opening Brief in Court of Appeals Cause No. 74566-2-1 to the following party:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED April 27, 2016, at Bellingham, Washington.



HELEN PACKER