



RE: FW: 123057.000001 Mark DeCoursey and Carol DeCoursey v. Paul Stickney

1 message

McBride, Ryan P. <McBrideR@lanepowell.com>
To: Mark DeCoursey <mhdecoursey@gmail.com>

Tue, Jan 26, 2010 at 2:17 PM

Thanks Mark. This looks good. Feel free to provide answers. Answers are always good.

From: Mark DeCoursey [mailto:mhdecoursey@gmail.com]
Sent: Monday, January 25, 2010 10:36 AM
To: McBride, Ryan P.
Subject: Re: FW: 123057.000001 Mark DeCoursey and Carol DeCoursey v. Paul Stickney

Below are some moot questions for your consideration. Some are answered.

Quiz for Ryan's oral argument

1. What is the evidence that Stickney was an officer of [REDACTED]
 - Broker Ken Bacon testified that he learned of the fact from Stickney in their discussions.
2. What evidence that [REDACTED] was not registered?
 - The fact was stipulated by [REDACTED] in 2007 summary judgment, and certified by court ruling.
3. How did Stickney participate in the project after closing?
 - Conveyed documents between DeCourseys and [REDACTED]
 - Located architect Skugland
 - Inspected project without permission from DeCourseys
 - Advised DeCourseys on financing to pay [REDACTED]
 - Located mortgage broker for financing
 - Compiled list of comparable sales to "help" lender's appraiser
 - Helped to write collection letter for [REDACTED]
4. What is the evidence that Stickney helped to write a collection letter?
 - **Exhibit 15:** [REDACTED] sent draft to Stickney with request for editorial assistance
 - [REDACTED] sent final draft to Stickney a few hours later with corrections
 - If Stickney did not help, the evidence shows at least that Stickney did not refuse to help [REDACTED]
5. What evidence does Windermere have of "extensive revisions" following Stickney's "departure" from the project?
 - None -- see question 6
6. "DeCourseys" entire case was based on their claim that Stickney was responsible for the faulty

work done by [REDACTED] But the work was defined after Stickney's involvement ended. No matter how hard DeCourseys try to sweep this under the rug, it colors every aspect of this case."

- The jury heard evidence that Stickney designed the major features of the renovation prior to DeCourseys purchasing the house. Those features are listed in three documents authored by Stickney and put into evidence:
 - Exhibits 20, 21, 23,
7. Why did DeCourseys keep on paying after they discovered problems with [REDACTED] performance?
 - [REDACTED] kept telling DeCourseys they were almost finished
 8. Washington law has never held a real estate agent liable for construction damage.
 - Washington holds real estate agents responsible for any damages proximately caused by breach of fiduciary duty and/or undisclosed conflict of interest
 9. Under what legal theory is Stickney held responsible for the construction damage?
 10. What exactly was Stickney's conflict of interest?
 11. Did Stickney know that [REDACTED] was not a registered contractor?
 - Under licensing laws, it was Stickney's legal obligation to know
 12. Did Stickney deliberately misrepresent [REDACTED] skills?
 - The jury heard evidence that Stickney had never seen [REDACTED] perform the kind of advanced construction for which Stickney was recommending [REDACTED] (Stickney deposition quoted by DeCoursey). Testifying to be true something he does not know to be true is equivalent to testifying to something he knows to be false. With that testimonial, Stickney was acting in a manner contrary to the interests of his clients, a clear violation of real estate law.
 13. If Stickney is a partner in the [REDACTED] proprietorship, how do you hold that Stickney a source distinct from [REDACTED]
 - [REDACTED] was a full corporation and Stickney was listed as shareholder and officer on government documents -- factuality of which Windermere and Stickney have denied, despite broker (and corporate spokesman) Bacon's testimony. Though the [REDACTED] corporation went through administrative dissolution, it was reinstated in October 2004. Under Washington law (23B.14.220), when a corp is reinstated, "it relates back to and takes effect as of the effective date of the administrative dissolution."
 14. Did DeCourseys waive their claim to attorney fees?
 15. Was that a quid pro quo agreement to avoid a discovery question?
 16. Are you arguing that DeCourseys did or did not waive attorney fees?
 17. Why did DeCourseys agree to waive attorney fees?
 18. When the interlocutory appeal was denied, why didn't you request a reconsideration of the ruling?
 - The ruling was exactly as it said: Under RAP, the August 23, 2007 decision did not sufficiently change status quo to require a ruling from Appeals Ct. We did not pursue a reconsideration because of the likelihood that the result would be the same.

The commissioner ruled that the August 23 decision did not change the status quo of the case. Because it did not change the status quo, we reasoned that it was not necessary to pursue a reversal of the ruling.

Windermere now argues that the August 23, 2007 ruling DID change the status quo of the case, in that the attorney fee claim potentially available to DeCourseys was thereafter not available to DeCourseys. Thus, while citing the ruling, Windermere argues against the reasoning of the Appeals Court.
 19. Did DeCourseys claim for attorney fees in their complaint?

- Yes

20. Why did DeCourseys argue on the petition for discretionary review that they had not understood Erlick's ruling?

- DeCourseys did not understand Erlick's interruption with the words, "You mean the \$125?" Nobody could understand that because Erlick did not provide context, Erlick did not cite an existing law. Erlick could not cite an existing law because no law provides for \$125 attorney fees in Washington Superior Court. Since the ruling was erroneous, DeCourseys did not understand.

21. What is the basis for DeCourseys' attorney fee claim?

- CPA
- RPSA

22. DeCourseys' legal expenses claim is based on tort law; how then can DeCourseys base the legal expenses claim on the RPSA contract?

- Windermere argued that Windermere is a 3rd party beneficiary of the RPSA, thereby binding itself to the terms of that contract

23. How does the RPSA legal expenses clause apply to disputes with the real estate agent?

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On Fri, Jan 22, 2010 at 3:39 PM, McBride, Ryan P. <McBrideR@lanepowell.com> wrote:

Got it.

As to preparation, you will have to trust the fact that I will prepare for this argument as I do for all my arguments; my goal always is to know the record "cold." It doesn't make any sense for me to do that too far in advance of the argument date; I don't want my memory to fade. I think we will just have to play it by ear, depending on if and when the court moves the hearing date. If you want to send me your thoughts and/or mock questions before you leave to help me prepare, and/or meet with me to discuss generally, that would be fine, but I won't be in a position for any kind of moot court by that time.

From: Mark DeCoursey [mailto:mhdecoursey@gmail.com]

Sent: Friday, January 22, 2010 3:30 PM

To: McBride, Ryan P.

Subject: Re: FW: 123057.000001 Mark DeCoursey and Carol DeCoursey v. Paul Stickney

Understood. With wording as you said, except use the term, "out of town."

What about the other questions about your debate drilling and Our Story?

On Fri, Jan 22, 2010 at 3:23 PM, McBride, Ryan P. <McBrideR@lanepowell.com> wrote:

I need to make a motion; I need to explain why we would like the hearing date moved; at a minimum, I would like to say that you will be on a previously-scheduled trip out of the country from February 20 through March 10, and thus will be unable to attend the currently scheduled hearing. I trust I can say that?

From: Mark DeCoursey [mailto:mhdecoursey@gmail.com]

Sent: Friday, January 22, 2010 3:17 PM

To: McBride, Ryan P.

Subject: Re: FW: 123057.000001 Mark DeCoursey and Carol DeCoursey v. Paul Stickney

Ryan:

We do not want Windermere or anyone else to know where we will be or why we cannot make it to a hearing on March 5 -- It's nobody's business but ours. (We gave prior notice of our unavailability months ago.)

Giving them our flight itinerary is out of the question.

Windermere, without any by-your-leave, took as much extra time as they bloody well saw fit in submitting their briefs late. Recall that no doctor note was produced for Davis' mononucleosis, leprosy, and whatever else the poor lad suffered.

If necessary, you can say we will be available on March 11.

BUT -- What times does that leave us for helping you become familiar with "Our Story," Parts I, II, and III? We need to do it right away. We will be leaving February 22. There is little time. We also need a little time to hammer you with debate questions, and we do have a list.

We can tell from the web page stats that Windermere will be fully familiar with "Our Story," Parts I, II, and III. It would be truly tragic if they knew the story better than you.

You may want to give yourself a week or two margin between our return and the hearing so that we have time for final discussion of the facts.

On Fri, Jan 22, 2010 at 1:29 PM, McBride, Ryan P. <McBrideR@lanepowell.com> wrote:

Okay. I'll make a motion to reschedule the date, which is what I have to do. I need more details regarding your travel as I will have to go into it for the motion, is it just to Australia? (Any chance you have a flight itinerary?) I will likely call Bill Hickman, because I know he won't object and I would like to state that in the motion as well.

[They do record the hearing, and you can listen to it on the website I believe.](#)

From: Mark DeCoursey [mailto:mhdecoursey@gmail.com]
Sent: Friday, January 22, 2010 1:25 PM
To: McBride, Ryan P.
Subject: Re: FW: 123057.000001 Mark DeCoursey and Carol DeCoursey v. Paul Stickney

We will be out of the country from Feb 20 until Mar 10. Thanks for the offer to reschedule, as we are very much hoping to be there.

Incidentally, do they record the hearing?

On Fri, Jan 22, 2010 at 1:05 PM, McBride, Ryan P. <McBrideR@lanepowell.com> wrote:

[Mark - the court of appeals has scheduled oral argument for March 4. If you are out of the country at that time, let me know the details, so that I can move for a continuance of the hearing date so that you can be present.](#)

From: Docketing-SEA
Sent: Friday, January 22, 2010 1:03 PM
To: Gabel, Andrew J.; Galland, Melissa; Lorber, Abraham K.; McBride, Ryan P.; Nourse, Brent L.; Salinas, Lorrie; Savaria, Kathy; Van Buren, Helen
Subject: 123057.000001 Mark DeCoursey and Carol DeCoursey v. Paul Stickney

The attached document was received in the Seattle office today by:

U.S. Mail

Thank you,

Kurt Henderson



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