



200909250041

Skagit County Auditor

9/25/2009 Page

1 of

7 11:59AM

When recorded return to:

Craig Sjostrom
411 Main Street
Mount Vernon, Washington 98273

Judgment
08-2-01076-0

Grantors: (1) Katherine Rice
(2) Christine Johns

Grantee: Cape Horn Maintenance Co.

Legal Description: Lot 22, Block I, Div. 2, Cape Horn on the Skagit

Assessor's Property Tax Parcel or Account No.: P63301

Reference Nos of Documents Assigned or Released: 200711160021; 200807210191

IN THE SUPERIOR COURT, STATE OF WASHINGTON, SKAGIT COUNTY

CAPE HORN MAINTENANCE Co., a
Washington nonprofit Corporation,

Plaintiff,

vs.

KATHERINE RICE, an unmarried person;
CHRISTINE JOHNS, a married person as her
separate property.

Defendant.

Case No.: 08-2-01076-0

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

I. JUDGMENT SUMMARIES

Judgment Creditor:Cape Horn Maintenance Co.
Judgment Debtors:Katherine Rice; Christine Johns
Principal Judgment Amount:.....\$3,998.00
Interest to Date of Judgment:.....\$47.84
Taxable Costs:\$289.00
Attorney's Fees:~~\$6,342.50~~ 5342.50
Attorney for Judgment Creditor:Craig Sjostrom #21149
Attorney for Judgment Debtors:David L. Day #8361

Judgment Creditor:.....David L. Day
Judgment Debtor:Cape Horn Maintenance Co.
Principal Judgment Amount:\$6,461.00
Judgment to Accrue Interest at 12% per annum

\$ 2000.00
LD



II. FINDINGS OF FACT

Trial of this matter was held before the Hon. Michael Rickert on August 27, 2009.

The following persons testified:

For Plaintiff:

David Gregush
Donna Shaver

For Defendant:

Katherine Rice

9 exhibits were entered into evidence. Based on the exhibits and the testimony, the Court makes the following Findings of Fact:

- 2.1 Plaintiff is the managing entity for Cape Horn, a residential community located in Skagit County, Wash.
- 2.2 Defendants own the property located at 41717 South Shore Drive, Concrete, Wash., which is within Cape Horn.
- 2.3 Cape Horn is governed by Bylaws and a Member's Handbook. The Bylaws are binding on each parcel pursuant to a covenant recorded when Cape Horn was formed in the mid 1960's. Cape Horn charges an annual assessment in the amount of \$299, for water service and street lighting. The assessments are subject to a late charge of 1% per month.
- 2.4 The Cape Horn Bylaws restrict domestic animals allowed on a given lot, to dogs and cats only. Defendants have unauthorized animals on their lot, namely goats, chickens and ducks.
- 2.5 Cape Horn's Bylaws provide for fines of \$100 per month for a violation thereof. The fines have been accruing against defendants since November 1st, 2006, and as of September 1st, 2009 the total fines equal \$3,400. In addition, Defendants have not paid the assessments due for the period of July 1st, 2008 through June 30th, 2010, for a total of \$598. Interest at 1% per month has been accruing on the unpaid assessments, with the interest amount as of September 1st, 2009 amounting to \$47.84.
- 2.6 In July of 2006 Cape Horn amended its Bylaws respecting animals to reflect that charges would be incurred for the keeping of animals.



2.7 On November 16, 2007 Cape Horn filed a lien and on July 21, 2008 Cape Horn filed a lis pendens regarding the keeping of animals and the fines levied pursuant to Paragraph 2.5 above.

2.8 A review of the Bylaws shows the Cape Horn Bylaws do not provide for a lien for violation of Bylaws, covenants, or other rules and regulations within Cape Horn.

2.9 At the time the original Bylaw concerning animals was passed in 2006, Defendants had similar animals on their property. Since then, these have died and were replaced with different animals.

2.10 There is no medical necessity for Defendant having goats on their property. In addition, the presence of the animals is disturbing to the neighbors, and interferes with their reasonable use and enjoyment of their property.

2.11 A reasonable period of time within which Defendants are to remove the offending animals is 60 days. (commencing on Aug 27, 2009) *mm*

2.12 The Cape Horn Bylaws provide for an award of attorney's fees in connection with actions to enforce the same.

III. CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court draws the following Conclusions of Law:

3.1 The Court has jurisdiction over the parties and the subject matter of this action. All parties necessary for a just adjudication of the issues have been joined.

3.2 Defendant has violated the Cape Horn Bylaws, by having the unauthorized animals. In addition, they have failed to comply with their obligation to pay assessments. Interest at the rate of 1% per month may lawfully be charged on the unpaid assessments. The amount of \$100 per month for fines, as well as the power to restrict animals, is reasonable and within the lawful authority granted to Plaintiff.

3.3 Cape Horn's lien is unenforceable and is not a lien on the homestead, as the power to impose such a lien is beyond the Plaintiff's scope of authority. The lien and lis pendens shall be removed and released from the property immediately.

3.4 Defendant is entitled to costs and attorney's fees in the amount of \$6,461.00 for Defense of the lien proceedings herein pursuant to RCW 60.70.060. *\$42000.00*



3.5 Defendants should be ordered to remove the offending animals within 60 days, and should be restrained from bringing other unauthorized animals onto their property. In addition, judgment should be entered in favor of Plaintiff and against Defendants for fines, assessments and interest, in the amount of \$4,045.84.

2.6 Plaintiff is further entitled to its costs in the amount of \$289, and its attorney's fees in the amount of \$6,342.50, which such amount is adjudged to be reasonable.

III. JUDGMENT & ORDER

3.1 Judgment is hereby entered in favor of Plaintiff and against Defendant, in the principal amount of \$4,045.84, plus costs of \$289 and attorney's fees of ~~\$6,342.50~~, for a total judgment of ~~\$10,677.34~~ *5342.50* *CS* *D20*

3.2 Judgment is hereby entered in favor of Defendants and against Plaintiff for costs and attorney's fees in the amount of ~~\$6,461.00~~ as contained in the annexed judgment summary. *9,677.34 DM* *\$7000.00 DM*

3.3 Interest on the judgment shall accrue at the rate of 12% per annum.

3.4 Defendants shall remove the offending animals within 60 days, and shall be barred from bringing any other unauthorized animals onto their property, effective immediately. *(60 days commencing on Aug 27, 2009)*

3.5 Plaintiff shall immediately release the lien and the lis pendens recorded against Defendants' property.

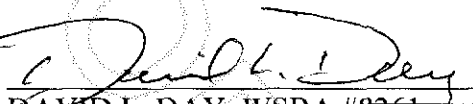
Dated this 25 day of September, 2009.

Approved as to form
Presented by:

[Signature]
MICHAEL E. RICKERT, Judge

[Signature]
CRAIG SJOSTROM, WSBA #21149
Attorney for Plaintiff

1 Approved as to form:

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4 DAVID L. DAY, WSBA #8361
5 Attorney for Defendants
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FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 5



200909250041
Skagit County Auditor

9/25/2009 Page 6 of 7 11:59AM

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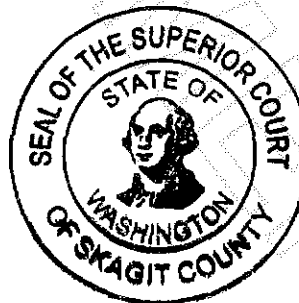
UNOFFICIAL

State of Washington, } ss.
County of Skagit

I, Nancy K. Scott, County Clerk of Skagit County and ex-officio Clerk of the Superior Court of the State of Washington, for the County of Skagit, do hereby certify that the foregoing instrument is a true and correct copy of the original, consisting of 5 pages, now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at my office at Mount Vernon this 25th day of September 2009. Nancy K. Scott, County Clerk.

By Melissa Lynn Robinson
Deputy Clerk



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Skagit County Auditor