Honorable Judge Richard D. Eadie
Hearing Date: Wednesday, December 21, 2011

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

LANE POWELL, PC, an Oregon professional corporation, Plaintiff, v. MARK DECOURSEY and CAROL DECOURSEY Defendants	No. 11-2-34596-3 SEA **ERRATA REQUEST**

Accompanying this request is a corrected copy of the *Declaration of Michele Earl-Hubbard* with a corrected page 3. Please file this corrected declaration in the place of the first and present it to the judge for consideration. Ask the court to substitute this new page 3 for the earlier one.

In this corrected version, Ms. Earl-Hubbard has underlined and bolded two mentions of the name "Gabel" where she had erroneously written "McBride." Paragraph 8 is recounting, as it says, a conversation Ms. Earl-Hubbard had with Andrew Gabel. She made a clerical error and referred to him as "Mr. McBride" twice within that same paragraph after having correctly identified him at the beginning at the paragraph. S she was obviously discussing the same conversation.

DeCourseys apologize for any inconvenience.

December 21, 2011
Date

Mark DeCoursey

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The Honorable Judge Eadie
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

LANE POWELL, PC, an Oregon professional corporation, Plaintiff, v. MARK DECOURSEY and CAROL DECOURSEY Defendants	No. 11-2-34596-3 SEA DECLARATION OF MICHELE EARL-HUBBARD

DECLARATION OF MICHELE EARL-HUBBARD

Michele Earl-Hubbard declares the following under penalty of perjury:

1. I am a not a party in this lawsuit. I am over the age of 18 and competent to testify. I make this declaration based on personal knowledge.

2. Earlier this year I was retained by Defendants Mark and Carol DeCoursey to represent them in their lawsuit against Windermere replacing their current counsel at Lane Powell. They had earlier contacted my firm for advice on that matter and concerns they were having with their current counsel's handling of it. I am not at liberty due to work product and attorney client privilege restrictions to discuss the substance or subjects of these earlier conversations.

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3. On August 3, 2011, I filed and served a Notice of Appearance to all attorneys identified as counsel in the case. I also instructed the attorney for the opposing party not to disburse any funds to Lane Powell or its Trust Account. A true and correct copy of that email is attached as **Exhibit A** hereto.

4. On August 3, 2011, I received a response to this email from William Hickman, the lead attorney for the adverse party in the lawsuit. A true and correct copy of his response is attached hereto as **Exhibit B.**

5. Later that day, before Lane Powell had filed or served any substitution or withdrawal paperwork, we and the DeCourseys received a notice of lien from Lane Powell. The Lien Notice had a specific dollar figure identified on it and I understood, and still understand, that to be the amount Lane Powell contends was owed and to which it claimed a lien.

6. On August 10, 2011, I received a phone call from Mr. Hickman. During the phone call, Mr. Hickman acknowledged that sometime prior to my Notice of Appearance he and Lane Powell had agreed to a partial payment on the judgment of $1 million from his client to the Lane Powell trust account. The location of the payment was at Lane Powell's request. He revealed that on the day I filed my Notice of Appearance and instructed him not to make any payments to Lane Powell or its trust account that he had to rush to put a stop to the transfer. From our conversation, it appeared the agreement to disburse $1 million to the Lane Powell trust account had been made quite some time before my involvement, and I came to understand this agreement had been reached sometime before notice to the DeCourseys by Lane Powell that such a payment was to occur.

7. On August 18, 2011, I sent an email to Lane Powell attorney Ryan McBride. A true and correct copy of this email is attached as **Exhibit C**. Later that day I received a

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response email from Mr. McBride. A true and correct copy is attached hereto as **Exhibit D.**

8. On August 18, 2011, I spoke by phone with Lane Powell attorney Andrew Gable. Mr. Gable and I discussed the issues in my email of that same day sent to Mr. McBride. I explained that Mr. Hickman and his clients were uncomfortable making a partial payment on the judgment without assurances that Lane Powell did not object to the arrangement and suggested as I had done in my earlier email to Mr. McBride that we agree to have the money deposited somewhere for safekeeping with an agreement that the amount in excess of the Lane Powell lien notice be disbursed to the DeCourseys while the Lane Powell lien notice amount was kept secured until the lien issue was sorted out. Mr. **Gable** said Mr. Degginger was out until Monday but that he had talked to firm management and their response right now was that the money could not be deposited anywhere except the Lane Powell trust account and that Lane Powell would not agree to allow any disbursement to the DeCourseys until the Lane Powell lien was paid first. I told him I did not think Lane Powell could hold the DeCourseys' money "hostage" so long as the amount Lane Powell claimed under its lien was held somewhere safe, and that the Lane Powell trust account would not be an acceptable location as Lane Powell no longer represented the DeCourseys. I asked him to talk to Mr. Degginger when he returned and to get back to me with other options. Mr. **Gable** kept saying "all they have to do is pay us and we will withdrawal our lien" to which I explained the DeCourseys did not have the money to pay the amount of the lien until there was a payment on the judgment. He agreed he would talk to Mr. Degginger and get back to me.

9. On August 18, 2011, Mr. Gable sent me an email with the Partial Satisfaction

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of Judgment his firm had earlier negotiated with Mr. Hickman for payment of $1 million to the Lane Powell Trust Account. A true and correct copy of that email is attached hereto as **Exhibit E.**

10. Later that same day Mr. McBride sent me an email stating "no feedback, no discussions" alleging apparently he had had no discussions with Mr. Hickman and had given him no feedback on the proposed judgment satisfaction paperwork for which his firm had been about to receive a $1 million payment from the insurance company. A true and correct copy of that email is attached hereto as **Exhibit F**.

11. On August 23, 2011, Mr. Gable and Mr. Degginger called me together on speakerphone. Mr. Degginger demanded to know what issues the DeCourseys had with the lien amount or their fees. Mr. Degginger wanted precise billing entries or precise issues they contested. I explained that I was new to this case and just getting up to speed and that I had been brought in to deal with the remand issues and was just trying to get my head around the situation so I could respond to Mr. Hickman about this issue of a partial payment now of uncontested amounts at least. I explained I was just trying to get access to the files and records and information I needed to get a modified judgment prepared, put together a cost motion if necessary or at least sort out the amount of costs to suggest as a stipulated amount, and deal with getting an agreement for a deposit to some location of judgment proceeds so the DeCourseys could get the amounts beyond the Lane Powell lien notice amount while the lien amount was sorted out between Lane Powell and the DeCourseys.

12. Mr. Degginger repeated that his firm needed to know what the DeCourseys' issue was with the lien amount and wanted the DeCourseys to authorize payment to Lane

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Powell of the full lien amount before any payment was made to the DeCourseys. I explained that we basically had three issues right now I thought needed to be addressed.

13. I explained that issue one was whether Lane Powell would agree that the judgment amount or a partial judgment amount somewhere around $1 million could be deposited by Mr. Hickman's clients right now to a secure location and if, so, where. I explained Mr. Hickman had told me he was uncomfortable depositing any judgment money without Lane Powell's sign off and so a lack of agreement by Lane Powell was a hold up of the deposit. I suggested our trust account at Allied Law Group or an escrow account as the location for the deposit but invited them to offer us some other place. Mr. Degginger said the full judgment amount should be deposited to the Lane Powell Trust Account. I explained that was not an option. I explained the reason his trust account was no longer appropriate was his firm no longer represented the DeCourseys, and so our trust account would be a more logical place for the funds to be deposited than his firm's. He objected to our trust account saying "they might fire you tomorrow." I asked him again to suggest other secure locations – other than the Lane Powell Trust Account – for a deposit of the judgment amount.

14. I next addressed issue two. Issue two was that once this money was in this secure location, whether Lane Powell would agree and not object to disbursement to the DeCourseys of amounts in excess of the Lane Powell lien notice amount. I explained we did not need his permission for this, but that I was informing him of our plan to arrange for payment to the DeCourseys of the amount in excess of the Lane Powell lien notice while keeping the amount noted in the Lane Powell lien notice secure. (At no time during this discussion, or any other, was there any mention by Mr. Degginger or Mr. Gable that the

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dollar figure noted in that lien notice was not the complete amount to which Lane Powell claimed a lien. They did not mention the concept of interest, for example, nor did they ever inform me their fees and costs were allegedly accruing interest pursuant to any agreement.)

15. I next turned to issue number three. Issue three related to the issue of the Lane Powell lien and the amount allegedly owed to Lane Powell. I explained to Mr. Degginger that I did not believe issue number three could be used as grounds to hold up a deposit of the judgment money to some secure account or disbursement to the DeCourseys of the amounts above the lien notice amount so long as the lien amount was in a secure location while the lien was addressed. I said I did not believe a judge would ever allow Lane Powell to hold up payment like that if we were forced to brief the issue and that I thought the court would be annoyed with the lawyers (by which I meant Lane Powell) for taking that position. I said it would appear "problematic" for his firm to take such a position from an ethical and legal standpoint. I said that maybe I was misunderstanding him but it sounded like he was saying Lane Powell was going to "hold the DeCourseys' money hostage" unless the DeCourseys agreed to pay Lane Powell in full its lien notice amount. Mr. Degginger did not disagree with me that this was his position. I asked him to consider my questions as to issues #1 and #2 and get me an answer in writing that same week or as soon as possible so I knew his firm's position on this (whether they will agree to payment by Mr. Hickman to my law firm's trust account or some location other than the Lane Powell Trust Account, and whether they would agree to allow disbursement to the DeCourseys of all amounts above the lien notice dollar figure.) I said I would ask the DeCourseys as to the issues of the lien dispute and if they had an answer as to whether there was a specific portion of the lien notice amount

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they did not dispute and the specifics of any disputed amounts, but that I did not think Lane Powell should be communicating with the DeCourseys as represented persons and should relay any communications through me.

16. I asked them for the files related to the judgment interest selection and the cost motion, their attorney bills to the DeCourseys and the backup for costs on their invoices so I could try and break out the costs into the categories required by the appellate court on remand. Mr. Degginger complained that it was a lot of work to sort out costs for what could be just a few thousand dollars, and I said the clients were entitled to seek recovery of those costs if they wanted so we needed the backup so the clients or a staff member could review it and do the parsing.

17. I then also asked them for detail as to how the 3.49% interest was selected in the original judgment since I could not for the life of me figure out how they had picked that number. They appeared nervous at this point but said they would get us the records of the filings and discussion surrounding that issue.

18. I asked Mr. Degginger and Mr. Gabel to get me their responses to my requests and questions in writing. They agreed to get back to me.

19. After our phone call, I received an email on August 23, 2011, from Mr. Gabel regarding the interest rate. A true and correct copy of that email is attached hereto as **Exhibit G.**

20. I received several communications from Mr. Hickman thereafter asking about the cost determination and status of our work sorting out what costs were recoverable under the test set forth by the appellate court. Given the lack of detail in the Lane Powell

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billing records regarding the costs charged to the DeCourseys, I wrote to Lane Powell on October 5, 2011, asking them to provide more detail about these costs so it could be determined what they were for and whether they fell within the categories of RCW 4.84.010. A true and correct copy of my letter to Messrs. Gabel, McBride and Degginger is attached hereto as **Exhibit H**. The letter was sent at 11:33 a.m. on October 5th by email, then by fax and mail that same day.

21. On October 19, 2011, Robert Sulkin of McNaul Ebel sent me a letter in response to my October 5th letter to Lane Powell regarding their costs. Mr. Sulkin characterized my letter asking for detail of the costs charged to the DeCourseys by Lane Powell as a request for "legal advice" from Lane Powell and informed me Lane Powell would not provide me any information. A true and correct copy of such letter is attached hereto as **Exhibit I**.

22. In the attached Exhibit D to this Declaration, Lane Powell acknowledges that while representing the DeCourseys the only cost request Lane Powell submitted to the trial court was one based on a declaration prepared exclusively by Mark DeCoursey of $45,442 in costs paid and incurred independently by the DeCourseys. See **Exhibit D**. Lane Powell had not asked in the cost motion for any of the more than $18,000 in additional costs Lane Powell had charged the DeCourseys during the trial court phase of the case. On remand, the DeCourseys were authorized to seek a recovery of the trial court costs they could show fell within the categories of RCW 4.85.010. Because Lane Powell declined to provide the DeCourseys any detail about the more than $18,000 in costs it had charged the DeCourseys (see Exhibit I), and because the record at the trial court level for the cost request Lane Powell

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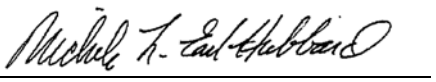
had submitted was exclusively a declaration prepared by the client with no discussion or evaluation of whether the records fell within the categories of RCW 4.85.010, the DeCourseys were forced to compromise their cost claims at the trial court level to $650 of the more than $63,000 in costs they had incurred. There were also questions of waiver if the DeCourseys had been able to obtain detail about the costs charged them by Lane Powell sufficient to include them in a cost motion on remand because Lane Powell had not presented these costs at any time prior in the litigation.

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

Dated this 18th day of December, 2011 at Shoreline, Washington.



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