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IN SUPERIOR COURT
STEVENS COUNTY

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SUPERIOR COURT OF WASHINGTON FOR STEVENS COUNTY

STEVENS COUNTY, WASHINGTON, EX
REL. TIM RASMUSSEN; AND TIM
RASMUSSEN, IN HIS OFFICIAL
CAPACITY AS PROSECUTING
ATTORNEY OF STEVENS COUNTY,
WASHINGTON,

No. 19 2 00122 33

COMPLAINT

Plaintiffs,

vs.

TRAVELERS SURETY AND CASUALTY
COMPANY OF AMERICA; UNITED
STATES FIRE INSURANCE COMPANY;
DONALD L. DASHIELL, IN HIS
PERSONAL CAPACITY; WESLEY LEWIS
McCART, IN HIS PERSONAL CAPACITY;
AND STEVEN LYNN PARKER, IN HIS
PERSONAL CAPACITY,

Defendants.

Plaintiffs allege:

I. INTRODUCTION

1.1 This Complaint arises from transfers of Stevens County funds to private persons, which were made by Stevens County Commissioners Don Dashiell, Wesley Lewis McCart, and Steven Lynn Parker without lawful authority and in violation of the Washington Constitution's prohibitions against the gifting of public funds, as confirmed by a recent audit performed by the Washington State Auditor.

1 **II. SUBJECT MATTER JURISDICTION**

2 2.1 This Complaint includes a request for declaratory judgment over which this
3 Court has subject matter jurisdiction pursuant to Wash. Const. Art. 3, § 6, RCW 2.08.010
4 and RCW 7.24.010.

5 2.2 This Complaint includes a claim to recover on official bonds of public
6 officials over which this Court has subject matter jurisdiction pursuant to Wash. Const.
7 Art. 3, § 6, RCW 2.08.010 and Ch. 42.08 RCW.

8 2.3 This Complaint includes a claim to recover gifts of public funds over which
9 this Court has subject matter jurisdiction pursuant to Wash. Const. Art. 3, § 6, Wash.
10 Const. Art. 8, §§ 5 & 7, Wash. Const. Art. 11, § 14, and RCW 2.08.010.

11 **III. PARTIES AND PERSONAL JURISDICTION**

12 3.1 Plaintiff Stevens County, Washington, is a political subdivision of the State
13 of Washington. *See* RCW 36.04.330. Stevens County maintains this action on the relation
14 of Plaintiff Tim Rasmussen, based on the authority to prosecute actions upon bonds
15 conferred by RCW 36.27.020, and with leave of the Court pursuant to RCW 42.08.030.

16 3.2 Plaintiff Tim Rasmussen (“Rasmussen”) is the duly elected Prosecuting
17 Attorney of Stevens County, Washington. In his official capacity as Prosecuting Attorney,
18 he has the mandatory obligation to appear for and represent the county in all civil
19 proceedings in which the county may be a party pursuant to RCW 36.27.020(3); and to
20 prosecute all civil actions in which the county may be a party, including prosecution of
21 actions upon bonds and prosecution of actions for the recovery of debts accruing to the
22 county pursuant to RCW 36.27.020(4).

23 3.3 Defendant Travelers Casualty and Surety Company (“Travelers”) is a
24 foreign insurer. Travelers has issued bonds to secure the faithful performance of the

1 duties of Defendants Wesley Lewis McCart and Steven Lynn Parker in the office of Stevens
2 County Commissioner pursuant to RCW 36.15.050 and RCW 36.32.060.

3 3.4 Defendant United States Fire Insurance Company ("US Fire") is a foreign
4 insurer. US Fire has issued a bond to secure the faithful performance of the duties of
5 Defendant Donald L. Dashiell in the office of Stevens County Commissioner pursuant to
6 RCW 36.15.050 and RCW 36.32.060.

7 3.5 Defendant Donald L. Dashiell ("Dashiell") is a citizen of Washington
8 residing in Stevens County. He is the Commissioner for District #2 in Stevens County,
9 Washington. He was elected on November 2, 2010, and reelected on November 4, 2014,
10 and November 6, 2018.

11 3.6 Defendant Wesley Lewis McCart ("McCart") is a citizen of Washington
12 residing in Stevens County. He is the Commissioner for District #1 in Stevens County,
13 Washington. He was elected on November 6, 2012, and reelected on November 8, 2016.

14 3.7 Defendant Steven Lynn Parker ("Parker") is a citizen of Washington
15 residing in Stevens County. He is the Commissioner for District #3 in Stevens County,
16 Washington. He was elected on November 6, 2012, and reelected on November 8, 2016.

17 IV. VENUE

18 4.1 Venue is proper in this Court pursuant to RCW 4.12.025(1) because one or
19 more defendants resides in Stevens County.

20 V. FACTS

21 A. Stevens County homelessness funds.

22 5.1 Stevens County collects funds for local homeless housing and assistance
23 from surcharges on documents recorded with the county auditor pursuant to
24 RCW 36.22.1791(a) (effective July 22, 2011) and RCW 36.22.179(a) (effective July 22,
2018).

1 5.2 The funds are supposed to be disbursed in accordance with Ch. 43.185C
2 RCW and the County's homelessness plan.

3 5.3 On June 26, 2012, Stevens County adopted a homelessness plan pursuant
4 to County Resolution No. 34-2012.

5 **B. Use of Stevens County homelessness funds to build the "Pay it Forward
6 House."**

7 5.4 Beginning in 2014, the Casey McKern Pay It Forward Foundation
8 ("Foundation") requested funds from Stevens County to build a house for Casey McKern
9 who was tragically rendered quadriplegic in a diving accident. According to the
10 Foundation,

11 While living on-site Casey will continue to provide life coaching and
12 mentoring as well as health and wellness activities (i.e., hunting, shooting
13 and experiencing the great outdoors) for other spinal cord injury (SCI)
14 patients. It will be a custom SCI home built for SCI specific needs, foster
independent living and will be large enough to accommodate spinal cord
injured visitors and their guests at no cost. The PIFH [i.e., Pay It Forward
House] will not be a care provider, an assisted living facility and it will not
provide therapists, psychologist, or mental healthcare providers.

15 (Brackets added.) The request did not reference homelessness.

16 5.5 The Foundation's website describes its activities, but does not mention
17 homelessness. The purpose of the PIFH is described on the website as "supporting those
18 with spinal cord injuries."

19 5.6 The Foundation is registered with the Washington Secretary of State as a
20 "human service-other multipurpose" charity, rather than a "housing shelter charity."
21

22 5.7 On or about July 2014, Dashiell, McCart and Parker unanimously denied a
23 request to contribute to the PIFH from county hotel/motel tax funds.
24

1 5.8 Thereafter, the Foundation partnered with Habitat for Humanity-Colville
2 Valley Partners (“Habitat”) and together they requested Stevens County homelessness
3 funds for the PIFH.

4 5.9 In meetings and documents, Foundation and Habitat representatives
5 described the purpose of the PIFH as providing “mentoring,” “respite care,” and
6 “transitional care” to persons suffering from spinal cord injuries, which they claimed
7 would lower the risk of homelessness for such persons. In other contexts, Casey McKern
8 described the house as “a bed & breakfast/lay over/vacation house for SCI [i.e., spinal
9 cord injury victims] seeking travel and occupational opportunity.” He further described
10 the house as “a way to offer outdoor activities to anyone willing to travel.”

11 5.10 On or about December 29, 2014, Dashiell, McCart and Parker unanimously
12 approved \$50,000 from Stevens County homelessness funds for the PIFH.

13 5.11 On or about August 10, 2015, Dashiell, McCart and Parker unanimously
14 approved reimbursement of invoices submitted by the Foundation and Habitat for the
15 PIFH from Stevens County homelessness funds.

16 5.12 In the middle of building the PIFH, Habitat withdrew from the project for
17 multiple reasons, including excessive expenditures by the Foundation and breaches of the
18 parties’ agreement to build the PIFH.

19 5.13 On or about January 23, 2017, the Foundation requested additional Stevens
20 County homelessness funds for the PIFH.

21 5.14 On or about February 20, 2017, Dashiell, McCart and Parker unanimously
22 approved an additional \$50,000 from Stevens County homelessness funds for the PIFH.

23 5.15 On or about June 5, 2017, Dashiell and Parker approved reimbursement of
24 invoices submitted by the Foundation for the PIFH from Stevens County homelessness
funds. McCart did not approve the reimbursement.

1 5.16 When they approved the use of Stevens County homelessness funds for the
2 PIFH, Dashiell, McCart and Parker did not contemporaneously identify the provisions of
3 Ch. 43.185C RCW or the county's homelessness plan on which they relied as authority for
4 such approval; they did not require the funds to be used to reduce homelessness in
5 Stevens County; and they did not require an interest in the PIFH commensurate with the
6 county's contribution of homelessness funds to revert back to the county in the event the
7 funds were not, in fact, used to reduce homelessness in the county.

8 5.17 When Dashiell, McCart and Parker approved the use of Stevens County
9 homelessness funds for the PIFH, Casey McKern was not homeless. The Foundation had
10 previously raised money to ensure that he was able to live in his parents' house.

11 5.18 After Dashiell, McCart and Parker approved the use of Stevens County
12 homelessness funds for the PIFH, the PIFH has not, in fact, been used to reduce
13 homelessness in the county.

14 5.19 The current assessed value of the PIFH is \$460,409.

15 **C. Use of Stevens County homelessness funds to relocate the Boharskis'**
16 **residence.**

17 5.20 In the Spring of 2018, high water levels eroded property along the Kettle
18 River, including property owned by Joe and Alena Boharski ("Boharskis")

19 5.21 On or about May 18, 2018, a house on the Boharskis' property was declared
20 unsafe to occupy due to subsidence and erosion from the high water levels.

21 5.22 Also on or about May 18, 2018, without any request by the Boharskis, Parker
22 recommended using Stevens County homelessness funds to assist the Boharskis in
23 relocating the house. The Boharskis reside in his district.
24

1 5.23 On or about June 11, 2018, the Boharskis entered a contract with a company
2 to relocate their house in a different location. The contract price was \$28,000 plus tax in
3 the amount of \$2,128, for a total of \$30,128.

4 5.24 On or about June 27, 2018, the Boharskis paid \$10,042.67 to the contractor,
5 leaving a balance due of \$20,085.33.

6 5.25 On or about July 9, 2018, Dashiell, McCart and Parker unanimously
7 approved reimbursing the Boharskis \$30,128 from Stevens County homelessness funds
8 for the cost of relocating their house on a new foundation in a different location.

9 5.26 On July 23, 2019, Dashiell, McCart and Parker agreed to pay “fees
10 associated with the relocation of the Boharski residence” in addition to the cost of
11 relocation itself from county homelessness funds.

12 5.27 On or about July 21, 2018, the Boharskis paid the contractor the balance
13 due of \$20,085.33 to relocate their house.

14 5.28 On August 8, 2018, the County issued payment in the amount of \$30,128
15 directly to the Boharskis.

16 5.29 Also on August 8, 2018, the County issued an additional payment in the
17 amount of \$198.25 to “Stevens County Land Services” for permits and site analysis for the
18 benefit of the Boharskis.

19 5.30 When they approved the use of Stevens County homelessness funds for the
20 Boharskis, Dashiell, McCart and Parker did not contemporaneously identify the
21 provisions of Ch. 43.185C RCW or the county’s homelessness plan on which they relied as
22 authority for such approval; and they did not determine whether the Boharskis had
23 sufficient funds or equity in their property to finance the relocation of their house
24 themselves. They simply relied on the Boharskis’ representations that they did not have

1 insurance to cover the relocation and they could not otherwise afford to relocate the
2 house.

3 **D. State audit.**

4 5.33 On February 21, 2019, the Washington State Auditor issued a report finding
5 that using Stevens County homelessness funds for the benefit of the PIFH and the
6 Boharskis constitutes unconstitutional gifts of public funds.

7 5.34 Following receipt of the audit, Dashiell, McCart, and Parker have declined
8 to reimburse Stevens County for the unlawful expenditure of homelessness funds.

9 **VI. CLAIM FOR DECLARATORY JUDGMENT**
10 **(AGAINST ALL DEFENDANTS)**

11 6.1 Rasmussen seeks a declaration of rights, status and other legal relations as
12 follows:

13 6.1.1 The use of county homelessness funds for the PIFH is not authorized
14 by and is contrary to the Stevens County homelessness plan, Resolution No. 34-
15 2012;

16 6.1.2 The use of county homelessness funds for the PIFH is not authorized
17 by and is contrary to Ch. 43.185C RCW;

18 6.1.3 The use of county homelessness funds for the PIFH is an
19 unconstitutional gift of public funds under Wash. Const. Art. 8, §§ 5, 7, and/or
20 Wash. Const. Art. 11, § 14;

21 6.1.4 The use of county homelessness funds to relocate the Boharski
22 residence is not authorized by and is contrary to the Stevens County homelessness
23 plan, Resolution No. 34-2012;

24 6.1.5 The use of county homelessness funds to relocate the Boharski
residence is not authorized by and is contrary to Ch. 43.185C RCW; and

1 6.1.6 The use of county homelessness funds for to relocate the Boharskis
2 is an unconstitutional gift of public funds under Wash. Const. Art. 8, §§ 5, 7, and/or
3 Wash. Const. Art. 11, § 14.

4 6.2 Defendants are persons whose rights, status and legal relations are affected
5 by the foregoing requests for declaratory judgment.

6 **VII. CLAIM ON OFFICIAL BONDS OF PUBLIC OFFICERS**
7 **(AGAINST TRAVELERS AND US FIRE)**

8 7.1 US Fire has issued Public Official Bond No. 615978818 in the amount of
9 \$20,000 to ensure the faithful performance of the duties of Dashiell as Stevens County
10 Commissioner for the period of time beginning January 1, 2015, and ending January 1,
11 2019.

12 7.2 Dashiell has failed to faithfully discharge his duties; approved and ordered
13 payment of illegal, unwarranted, and unjust claims against the county for personal
14 services in violation of RCW 36.32.060; and engaged in official misconduct and neglect
15 of duty within the meaning of RCW 42.08.020 and .030, as follows:

16 7.2.1 Approving the use of Stevens County Homelessness funds for the
17 PIFH on or about December 29, 2014;

18 7.2.2 Ordering reimbursement of invoices from Stevens County
19 homelessness funds for the PIFH on or about August 10, 2015;

20 7.2.3 Approving the use of Stevens County homelessness funds for the
21 PIFH on or about February 20, 2017;

22 7.2.4 Ordering reimbursement of invoices from Stevens County
23 homelessness funds for the PIFH on or about June 5, 2017;

24 7.2.5 Approving the use of Stevens County homelessness funds for the
Boharskis on or about July 9 and 23, 2018; and

1 7.2.6 Ordering payment from Stevens County homelessness funds directly
2 to and for the benefit of the Boharskis on or about August 8, 2018.

3 7.3 Travelers has issued two Public Official Bonds to ensure the faithful
4 performance of the duties of Parker as Stevens County Commissioner, both numbered
5 105876234, and both in the amount of \$20,000. One bond covers the period of time
6 beginning January 1, 2013, and ending December 31, 2016, while the other covers the
7 period of time beginning December 31, 2016, and ending December 31, 2020.

8 7.4 Parker has failed to faithfully discharge his duties; approved and ordered
9 payment of illegal, unwarranted, and unjust claims against the county for personal
10 services in violation of RCW 36.32.060; and engaged in official misconduct and neglect
11 of duty within the meaning of RCW 42.08.020 and .030, as follows:

12 7.4.1 Approving the use of Stevens County Homelessness funds for the
13 PIFH on or about December 29, 2014;

14 7.4.2 Ordering reimbursement of invoices from Stevens County
15 homelessness funds for the PIFH on or about August 10, 2015;

16 7.4.3 Approving the use of Stevens County homelessness funds for the
17 PIFH on or about February 20, 2017;

18 7.4.4 Ordering reimbursement of invoices from Stevens County
19 homelessness funds for the PIFH on or about June 5, 2017;

20 7.4.5 Approving the use of Stevens County homelessness funds for the
21 Boharskis on or about July 9 and 23, 2018; and

22 7.4.6 Ordering payment from Stevens County homelessness funds directly
23 to and for the benefit of the Boharskis on or about August 8, 2018.
24

1 7.5 Travelers has also issued two Public Official Bonds to ensure the faithful
2 performance of the duties of McCart as Stevens County Commissioner, both numbered
3 105873846, and both in the amount of \$20,000. One bond covers the period of time
4 beginning January 1, 2013, and ending December 31, 2016, while the other covers the
5 period of time beginning December 31, 2016, and ending December 31, 2020.

6 7.6 Parker has failed to faithfully discharge his duties; approved and ordered
7 payment of illegal, unwarranted, and unjust claims against the county for personal
8 services in violation of RCW 36.32.060; and engaged in official misconduct and neglect
9 of duty within the meaning of RCW 42.08.020 and .030, as follows:

10 7.6.1 Approving the use of Stevens County Homelessness funds for the
11 PIFH on or about December 29, 2014;

12 7.6.2 Ordering reimbursement of invoices from Stevens County
13 homelessness funds for the PIFH on or about August 10, 2015;

14 7.6.3 Approving the use of Stevens County homelessness funds for the
15 PIFH on or about February 20, 2017;

16 7.6.4 Approving the use of Stevens County homelessness funds for the
17 Boharskis on or about July 9 and 23, 2018; and

18 7.6.5 Ordering payment from Stevens County homelessness funds directly
19 to and for the benefit of the Boharskis on or about August 8, 2018.

20 7.7 Stevens County has been injured by the misconduct and neglect of Dashiell,
21 McCart and Parker to the extent of their unlawful depletion of the county's homelessness
22 funds.

23 7.8 The misconduct and neglect of Dashiell, McCart and Parker renders US Fire
24 and Travelers liable to Stevens County to the extent of the amount of their bonds.

1 7.9 Rasmussen has the authority and obligation to maintain an action on the
2 official bonds of Dashiell, McCart and Parker pursuant to RCW 36.27.020(4) and
3 RCW 42.08.030.

4 **VIII. CLAIM TO RECOVER GIFTS OF PUBLIC FUNDS**
5 **(AGAINST DASHIELL, McCART, AND PARKER)**

6 8.1 The use of Stevens County homelessness funds by Dashiell, McCart and
7 Parker constitutes gifts of public funds in violation of Wash. Const. Art. 8, §§ 5, 7 and/or
8 Wash. Const. Art. 11, § 14.

9 8.2 The use of Stevens County homelessness funds by Dashiell, McCart and
10 Parker for the PIFH and the Boharskis is not a fundamental purpose of government.

11 8.3 The use of Stevens County homelessness funds by Dashiell, McCart and
12 Parker for the PIFH and the Boharskis is not “for the necessary support of the poor and
13 infirm.”

14 8.4 Stevens County did not receive any consideration in return for the use of
15 county homelessness funds for the PIFH or to relocate the Boharskis, and Dashiell,
16 McCart and Parker acted with donative intent.

17 8.5 Stevens County has been injured and damaged by the depletion of its
18 homelessness funds.

19 8.6 Rasmussen has the authority and obligation to recover gifts of Stevens
20 County funds pursuant to RCW 36.27.020(3) and (4).

21 **IX. RELIEF REQUESTED**

22 Based on the foregoing, Plaintiffs ask the Court to grant the following relief:

23 9.1 Leave to amend this Complaint in accordance with the facts revealed during
24 discovery;

1 9.2 Declaratory judgment as requested herein and all further relief consistent
2 with declaratory judgment authorized by RCW 7.24.080;

3 9.3 Money judgment against Travelers and US Fire in the full amount of the
4 bonds issued to Dashiell, McCart and Parker;

5 9.4 Money judgment against Dashiell, McCart and Parker for restitution of the
6 depleted Stevens County homelessness funds;

7 9.5 Prejudgment interest at the statutory rate from the date of each unlawful
8 use of Stevens County homelessness funds;

9 9.6 Attorney fees and costs as authorized by applicable law and equitable
10 grounds; and

11 9.7 Any further relief the Court deems warranted under the circumstances.

12 DATED this 18th day of March, 2019.

13 TIM RASMUSSEN
14 Stevens County Prosecuting Attorney

15 By: George M Ahrend

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