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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
FOR THE COUNTY OF CLARK

8 Nathen Barton,
9 Plaintiff

No. 24-2-04347-06

10 v.

MOTION FOR RULE 11
SANCTIONS AGAINST
DEFENDANT DELFGUAW AND
STARTER HOME INVESTING INC.

11 Joseph Robert Delfgauw, Starter Home
Investing, Inc, Education Assistance, Inc,
12 and John Doe 1-10
Defendants

13 **Introduction**

14 Summarized in the Complaint, this lawsuit is for calls beyond those addressed in federal
15 lawsuit styled *Barton v. Delfgauw*, 3:21-cv-05610-DGE (“Delfgauw I”).¹ That lawsuit addressed
16 state and federal telemarketing law claims against the Delfgauw 1 defendants. Party Xanadu
17 Marketing Inc. was a defendant in Delfgauw I but not in this lawsuit Delfgauw II. Party
18 Education Assistance Inc. is a party in Delfgauw II, but not Delfgauw I.

19 Delfgauw I and Delfgauw II have another thing in common, both address telemarketing
20 calls to a phone number (360) 910-1019. Delfgauw I covered unwanted telemarketing calls
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24 ¹ <https://dockets.justia.com/docket/washington/wawdce/3:2021cv05610/302688>

1 placed to the number from April 1, 2021, through December 31, 2021. Delfgauw II covers calls
2 to this same phone starting on January 1, 2022.

3 In Delfgauw I, all the Delfgauw I defendants countersued Barton for fraud and fraud by
4 non-disclosure. See Dkts 20 and 36, claims that were reasserted (Dkt 105) when Barton
5 amended his complaint (Dkt 83). The counterclaims alleged Barton when on a Delfgauw I
6 defendant website and requested calls (opt in) from the Delfgauw 1 defendants. This was
7 litigated extensively. Exhibit A is the docket of the Delfgauw I case from its inception through
8 11/22/2024.

9 The Exhibit A docket shows an important event on 11/1/2024 – the defendants’
10 counterclaims were dismissed on summary judgement. See Dkt. 416.

11 **The Delfgauw I defendants filed an answer and the SAME counterclaim in Delfgauw II**

12 On 1/16/2025, Barton was served an answer and counterclaim (“A&C”) in Exhibit B with
13 Delfgauw II’s case number, but Delfgauw I’s defendants now. Mr. Delfgauw’s two companies
14 are now represented by Delfgauw *pro se*. The A&C did not contain a phone number or address in
15 violation of LCR 7(b)(3)(C). The counterclaim was exactly the same counterclaim as was
16 recently dismissed in Delfgauw I, Dkt. 416. We know it is the same counterclaim because in
17 Delfgauw I they filed a motion for summary judgement [denied], claiming “It was with this
18 [1019] phone number and the information of the former owner that Plaintiff opted into
19 Defendant’s online campaign on April 1, 2021.” Dkt 416, 9:17-19.

20 The counterclaim in the A&C is barred by res judicata. Defendants previously asserted
21 these claims in Delfgauw I, they were dismissed at summary judgement in Delfgauw I, and now
22 the Delfgauw I defendants want to re-litigate the same claims in Delfgauw II. The Delfgauw II
23 counterclaims must be dismissed because they are barred by law.

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2 **The Law**

3 “CR 11 governs sanctions for two different types of filings: those lacking
4 a factual or legal basis and those made for improper purposes. [Bryant v.](#)
5 [Joseph Tree, Inc.](#), 119 Wn.2d 210, 217, 829 P.2d 1099 (1992). A court
6 may impose sanctions for either type of filing. See [Harrington v.](#)
7 [Pailthorp](#), 67 Wn. App. 901, 912, 841 P.2d 1258 (1992).”²

8 Both conditions are met. The Delfgauw 1 defendants just lost in federal court, the judge
9 finding that “fraud by nondisclosure” . . . “involves failure to disclose defects in real property”
10 and their fraud claim failed 55.6% of the 9 elements – the 1st, 3rd, 4th, 5th, and 6th – with whiffs on
11 the 8th and 9th. Instead of accepting the judge’s decision, the Delfgauw I defendants want to
12 relitigate these claims here, the two companies represented by a *pro-se* party. This is not
13 allowed.

14 Washington law generally requires individuals appearing before the
15 court on behalf of another party to be licensed to practice law. [No On I-](#)
16 [502 v. Wash.](#) NORML, 193 Wn.App. 368, 372-73, 372 P.3d 160 (2016).

17 There is a recognized "pro se exception" to these general rules where a
18 person "may appear and act in any court as his own attorney without
19 threat of sanction for unauthorized practice." But this pro se exception is
20 limited, applying "only if the layperson is acting solely on his own behalf
21 with respect to his own legal rights and obligations."³

22 Delfgauw’s pro-se status does not insulated him from CR 11.

23 “A pro se plaintiff may be subject to CR 11 sanctions if three conditions
24 are met: (1) the action is not well grounded in fact, (2) it is not warranted
by existing law, and (3) the party signing the pleading has failed to

23 ² [Pope v. Gardner](#), No. 45927-2-II, 10 (Wash. Ct. App. Oct. 6, 2015)

24 ³ [Cit Bank v. Scannell](#), No. 57254-1-II, 6 (Wash. Ct. App. Sep. 19, 2023)

