Supreme Court No. 91340-4

WASHINGTON SUPREME COURT

BRADLEY C. HOGGATT and CONNIE HOGGATT, husband and wife,

Respondents,

v.

LUIS A. FLORES,

Petitioner[1]

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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[1] Respondents have maintained the case title consistent with the pleadings in the trial court and Court of Appeals pursuant to RAP 3.4. Compliance with the court rule is the sole reason for the difference in the case title between Respondents' Answer and the Petition for Review.

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I. INTRODUCTION

The Respondents, Bradley and Connie Hoggatt ("Hoggatts"), innocently sold a parcel of real property to the Petitioner Luis Flores ("Flores") that had not been legally separated from their remaining land. But instead of assisting the Hoggatts to fix what all agreed was a simple procedural problem, or demanding that the transaction be rescinded, Flores tried to exploit the circumstances to strong-arm the Hoggatts into renegotiating the terms of the original conveyance.

When Flores refused to cooperate with bringing the property into compliance with the law, the Hoggatts sued for declaratory relief. After giving Flores every opportunity to state whether he intended to seek rescission under RCW 58.17.210, and Flores announcing to the court that he wanted to wait and see, the trial judge ordered Cowlitz County to accept the Hoggatts' short-plat application without Flores' signature.

Flores appealed[2] (*Hoggatt I)* but chose ***not to*** stay the trial court's order. The Hoggatts therefore completed the short-plat to bring Flores' property into compliance while Flores' appeal was on review before Division I of the Court of Appeals.

After the Hoggatts brought the property into compliance, Division I affirmed the injunction in a published opinion[3] and ruled the Hoggatts,

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[2] *Hoggatt v. Flores,* 152 Wn. App. 862, 218 P.3d 244 (2009) (hereafter "*Hoggatt I*"). It is important to note that *Hoggatt I* was decided by Division I of the Court of Appeals.

[3] *Id.*

(and Flores) not only had a right, but a "statutory duty" to bring the parcel into compliance with the platting laws. Flores never sought review of Division I's decision and so it became the rule of the case.

On remand, and despite the lot having been legal for over three years, Flores finally sought to rescind the conveyance. But he was too late. Flores no longer had standing, under the clear language of the statute, to seek rescission. Neither the statute nor common law authorized this untimely request.

The trial court and the Court of Appeals[4] (*Hoggatt II*) therefore made the correct ruling when it ruled that Flores was no longer entitled to rescission under the statute.

Flores' Petition should be denied under RAP 13.4(b) because the Court of Appeal's decision does not conflict with any decisions by the Supreme Court or other divisions of the Court of Appeals. The decision wholly follows Division I's ruling in *Hoggatt I* and with the long standing rule in Washington that one who seeks to rescind a transaction must act "promptly" after discovery of the basis for the rescission.[5] The Court of Appeals' decision also advances the public's interest, and the purposes of RCW 58.17.210, to ensure (1) non-conforming lots are quickly brought into compliance with the subdivision laws, (2) innocent buyers are provided a quick and effective remedy and (3) buyers exercise their rights

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[4] *Hoggatt v. Flores*, No. 45589-7-II, _ Wash. App. _, 342 P.3d 359 ("*Hoggatt II*").
[5] *Weitzman v. Bergstrom*, 75 Wn. 2d 693, 697, 453 P.2d 860 (1969)

in a timely fashion and not try to capitalize upon an innocent mistake as a means to negotiate remedies beyond those allowed under the statute.

II. ISSUES PRESENTED FOR REVIEW

The Hoggatts do not assign error to the Court of Appeals' decision. However, the Hoggatts believe this case presented the following issues:

1. RCW 58.17.210 permits a purchaser, as an alternative to having a parcel brought into compliance with the platting laws, to rescind the conveyance of an illegally-created parcel. But the law also permits (and even requires) the seller to fix the mistake and make the parcel legal. In this case, Flores did not demand a rescission until after the Hoggatts had made the parcel legal. Is Flores still entitled to rescission under the statute?

2. Rescission is an equitable and extraordinary remedy within the court's broad discretion. But a person who seeks rescission must promptly and unequivocally act to rescind the transaction. Here, Flores initially tried to exploit the Hoggatts' innocent mistake by trying to renegotiate the terms of the conveyance. He then took a wait-and-see approach during the first appeal. But now, after the Hoggatts have expended time and money to make the parcel legal, Flores wants to rescind the conveyance. Is Flores entitled to Rescission?

3. A party must seek to stay the enforcement of a final judgment granting injunction to preserve his rights. Here, Flores appealed the trial court's injunction ordering the property be brought into compliance with RCW 58.17.210 but did nothing to stop the Hoggatts from bringing the property into compliance with the law. This meant that, while the appeal was pending, the basis for a rescission ceased to exist. Is Flores entitled to a rescission if he failed to seek a stay of the enforcement of the final judgment granting an injunction?

III. COUNTERSTATEMENT OF THE CASE

Mr. and Mrs. Hoggatt rely upon and incorporate the facts in their Respondents' Brief submitted to the Court of Appeals below and as stated by the Court of Appeals in *Hoggatt II.* But for this Answer, they wish to highlight the following[6]:

A. Hoggatts sold the Property to Flores in 2004.

The Hoggatts acknowledge they innocently sold a non-conforming parcel with a residence to Flores in 2004 ("Property") that was contiguous to their other property. Neither party realized the mistake at the time of the conveyance.

The defect only came to light three years later (2007) when the Hoggatts applied for a permit to construct a home on their remaining parcel. It is undisputed that because he was already living in the home and had sought no land-use approvals, the procedural defect had caused no harm to Flores.

Upon discovering the problem, the Hoggatts immediately took affirmative action to bring the Property into compliance with platting requirements. The undisputed evidence, as described by Division I in *Hoggatt I* shows Flores was everything but helpful in the Hoggatt's efforts to bring the Property into compliance. Flores refused to co-sign the short plat application or otherwise cooperate with the Hoggatts unless the Hoggatts agreed to place additional conditions on their remaining parcel.

[6] *See generally* Clark County CP 875-880.

Mr. Flores wanted to renegotiate the terms of the 2004 conveyance and add remedies beyond those provided under RCW 58.17.210. Division I referred to Mr. Flores' negotiations as "conditions not required by law."[7] Even Division II noted Flores' "intransigence" in *Hoggatt II.* It's also undisputed that Mr. Flores never asked the Hoggatts to rescind the transaction—he wanted to use the mistake to try and renegotiate the transaction.

B. Flores refused to cooperate with Hoggatts to make the Property legal, necessitating a lawsuit filed by the Hoggatts to seek an Injunction.

Cowlitz County would not process the Hoggatts' short-plat application without Flores' signature. Feeling trapped, and not wanting to give in to extortion demands, the Hoggatts sought judicial intervention to either (1) require Flores to cooperate to bring the Property into compliance under RCW 58.17.210, or (2) allow Cowlitz County to accept the application without his signature.

Flores filed an Answer and Counterclaim on June 20, 2008[8] where he asserted the Property was sold in violation of RCW 58.17.210.[9] But instead of unequivocally demanding a rescission, Flores merely stated he "**reserve[d]** the right to seek all relief allowed by RCW 58.17.210 to include rescission, damages in amounts to be proven at time of trial, and

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[7] *Hoggatt I*, 152 Wn. App. at 864; Clark County CP 877 L 1-8.
[8] Cowlitz County CP 1-2.
[9] *Id.* P. 2.

reasonable attorney's fees."[10] He never offered or demanded to rescind the 2004 conveyance.

C. Trial Court Granted Summary Judgment and Ordered Cowlitz County to Process the Short-Plat Application.

Still feeling trapped, and because the facts were never in dispute (i.e. the property was conveyed in violation of the statute) the Hoggatts moved for summary judgment on their request for injunctive relief. At the August 18, 2008 hearing, the trial judge, in an attempt to fashion an appropriate remedy, flat-out asked Flores whether or not he wanted to rescind.[11] Flores answered the Judge's question in writing as follows:

> At this point, Mr. Flores continues to hope that Mr. and Mrs. Hoggatt will see fit to honor their promise to Cowlitz County and limit the short-plat to two lots. If they do not, and if he cannot force them to, he is ***leaning*** **toward the remedy of rescission**. His doing so, of course, hinges on the court's willingness to follow the rules set out in *Busch v. Nervik, supra*. **His investigation is ongoing, however, and his *point of view may change.***[12]

In reliance upon Flores' uncommitted response, the trial court ordered Cowlitz County to accept the Hoggatts' short plat application so they could bring the Property into compliance with the platting laws.[13] Flores appealed the court's injunction **but never** obtained a supersedeas bond to stay enforcement of the trial court's order.

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[10] *Id.*
[11] Clark County CP 917 L. 14-17.
[12] *Id.* P. 923 (emphasis added).
[13] *Id.* P. 787.

D. Cowlitz County approved the Short-Plat and Flores' Parcel was deemed Legal on April 8, 2009.

Under the trial court's ruling, and while the case was on appeal under *Hoggatt I*, Cowlitz County recorded the short-plat on April 8, 2009. This means the Flores' Property has been a legal lot of record since April 8, 2009.[14]

E. Court of Appeals upheld Injunction and ruled that Each Party had a Legal Duty to make the Parcel Legal.

On October 26, 2009, six months after the Property was brought into compliance, Division I upheld the injunction[15] in a published opinion:

> When an owner of property subdivides it illegally and sells a parcel, both seller and purchaser have a statutory duty to conform the property to the subdivision laws. The aggrieved purchaser may elect either to rescind or to recover damages, but when the purchaser obstructs the seller's efforts to conform the property by insisting on conditions not required by law, a trial court does not err by entering an injunction in favor of the seller allowing the compliance process to proceed.[16]

Flores chose not to seek further review of that decision.

F. On Remand, Cowlitz County Superior Court ruled that Flores was not Entitled to Rescission.

Following remand from *Hoggatt I*, no significant action was taken in the trial court until Flores moved for partial summary judgment on

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[14] *Id.* P. 911.

[15] Neither counsel for the Hoggatts nor counsel for Flores was counsel for the parties during *Hoggatt I*. From the record, it does not appear the Court of Appeals was made aware during the proceedings of *Hoggatt I* that the short plat had been recorded on April 8, 2009.

[16] *Hoggatt I*, 152 Wn. App. at 864.

March 30, 2012.[17] Flores asked the trial court to rule that, although his Property had been in compliance with RCW 58.17.210 for nearly three years, he was still entitled to a rescission under the statute.[18]

The court denied the motion implying that statutory rescission was not available after the Property was brought into compliance with the platting statute.[19]

G. Clark County Superior Court ruled that Flores was not Entitled to Rescission.

The case was subsequently transferred to Clark County.[20] The trial court granted the Hoggatts summary judgment on the basis that Flores was not entitled to a statutory rescission because he (1) no longer had standing under the statute to seek such relief; and (2) had failed to "promptly" demand rescission.[21] Flores once again appealed the trial court's ruling.

H. *Hoggatt II* ruled that Flores was not Entitled to Rescission.

In a published decision, Division II agreed in *Hoggatt II* with both the Cowlitz County and Clark County trial judges that Flores was not entitled to rescind his purchase.

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[17] Cowlitz County CP 204-10.
[18] *See id.* CP 207 L. 13-19. It should be noted here that Flores essentially failed to demand rescission in his 2012 motion for summary judgment. Requesting a ruling that he possessed "a right to rescind the transaction" is different from unequivocally demanding the transaction be rescinded.
[19] *Id.* CP 17; CP 13, 44-45.
[20] *Id.*
[21] *See Id.* CP 946-47.

IV. ARGUMENT

Flores seeks review because he claims (1) an absolute right to rescission under RCW 58.17.210 and (2) the trial court could not force him to select his remedy at the summary judgment stage.

The law is clear on both points.

First, the statute permits a buyer of a non-conforming lot to either seek reimbursement for the cost to render the property legal or, "as an alternative to conforming his . . . . property", rescind the conveyance. However, the remedy is only available if the property is non-compliant. By the time Mr. Flores actually exercised his right of rescission, the property, under a valid court order, had been made to conform with the law. Flores therefore lacked standing to rescind the transaction.

Second, while the law allows a plaintiff to elect their remedies, they must do so before the court enters a final judgment. If they fail to elect a remedy, the court's judgment becomes the elected remedy. This is especially true with the remedy of rescission where the law requires the buyer to "promptly" demand rescission upon discovering the basis for canceling the transaction. Flores completely failed to meet this requirement.

The Court of Appeal's decision wholly follows rules of statutory construction and legal precedent regarding recissions and should not be further reviewed.

A. The Plain Language of the Statute Unquestionably Supports the Court of Appeals' Decision Below.

The plain language of the statute unquestionably supports the Court of Appeals' decision below. Flores' Petition misses the mark. If the statute really states what Flores argues, then why does the Petition fail to address the statutes' plain language stating rescission is an available remedy "as an alternative to conforming . . . property" to the platting requirements? Rather than brief and deal directly with the key statutory language, Flores cites a multitude of appellate decisions merely stating the alternative remedies authorized by RCW 58.17.210. But none of these authorities interpret, permit or even deal with rescission where the underlying nonconformity was cured *before* rescission was demanded under the statute.

Flores sought an alternative remedy, which was no longer available once the Property was brought into compliance, and not supported by the statute's plain language.

B. Flores' Petition does not meet the Substantial Public Interest Consideration because the Hoggatts cured the Platting Violation on April 8, 2009.

Flores' Petition does not meet the substantial public interest consideration because the Hoggatts cured the Property's platting violation in 2009. The Rules of Appellate Procedure state in pertinent part:

> A petition for review will be accepted by the Supreme Court only: . . .
>
> (3) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b)(1).

The Legislature succinctly stated the public purpose for which the platting statutes were drafted:

> The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. **The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare** in accordance with standards established by the state to **prevent the overcrowding of land**; to **lessen congestion** in the streets and highways; to **promote effective use of land**; to **promote safe and convenient travel** by the public on streets and highways; to **provide for adequate light and air**; to **facilitate adequate provision for water, sewerage, parks and recreation areas**, sites for **schools** and schoolgrounds and other public requirements; to provide for **proper ingress and egress**; to provide for the **expeditious review and approval of proposed subdivisions** which conform to zoning standards and local plans and policies; to adequately **provide for the housing and commercial needs** of the citizens of the state; and to require **uniform monumenting of land subdivisions** and conveyancing by accurate legal description.

RCW 58.17.010 (emphasis added).

The Legislature's stated interest was to subdivide land in a manner promoting the public health, safety and welfare.

The public's interest in the lawful subdivision of the Property was fully satisfied when the Property's short plat was approved by Cowlitz County on April 8, 2009.

Remember that Division I upheld the trial court's ruling that Hoggatts not only had a right to cure the defect, but a legal duty. Also remember that Flores did not seek to have this court review that decision.

Flores also failed to take steps to stop the injunction that allowed the Property to be brought into compliance.

Any involvement by the Supreme Court at this juncture would do nothing to serve the legislative purposes and corresponding public benefits intended to be provided by past compliance with platting requirements.[22]

There is no substantial public interest in allowing a buyer such as Flores the ability to rescind a purchase long after the underlying statutory grounds to support rescission have been cured. The exact opposite is true. Flores' attempt to exploit an innocent mistake to either (1) try to renegotiate the conveyance or (2) take a wait and see approach on what remedy he would accept would actually undermine the stated purpose of the statute. One can imagine the uncertainty of title and chaos that would result if the courts endorsed Flores' mischief. This approach would render the statute's language "as an alternative to conforming" meaningless besides causing confusion.

Flores' Petition demonstrates no substantial public interest in Supreme Court review of this action. His hypothetical questions also

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[22] In light of the express legislative/public purpose of the platting statutes, it is hard to take Flores' argument regarding substantial public interest seriously when it was Flores who refused to assist the Hoggatts in their efforts to resolve the Property's platting violation. Flores obstructed the Hoggatts' efforts to fix their mistake every step of the way, insisting—as the Court of Appeals kindly described in *Hoggatt I*—on "conditions not required by law".

invite the Supreme Court to issue an advisory opinion, an action the court has consistently refused to take.[23]

C. The Court of Appeals' Decision is Not in Conflict with a Decision of the Supreme Court.

The Court of Appeals' decision below is not in conflict with a decision of the Supreme Court. The rule in Washington has long required that one who seeks rescission must seek to rescind "promptly after discovery" of the circumstances that would allow the transaction to be rescinded.[24]

Flores has failed to provide a single Supreme Court or even a Court of Appeal's decision interpreting the rescission rights contained in RCW 58.17.210 to apply after property has been brought into compliance with the subdivision rules.

Flores argues he was justified in dodging the trial judge's question regarding the remedy he was seeking **when the trial judge was ready to rule on summary judgment** because he had a right to wait until trial to decide. He therefore claims the trial court erred when he was forced to elect his remedies at the summary judgment phase.

But Flores did not challenge that portion of the trial court's ruling in *Hoggatt I* and therefore cannot raise that in this second appeal[25].

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[23] *See, e.g., Walker v. Munro*, 124 Wn.2d 402, 411-12, 879 P.2d 920 (1994).
[24] *Weitzman v. Bergstrom*, 75 Wn.2d at 697.
[25] *State v. Worl*, 129 Wn.2d 416, 425, 918 P2d 905 (1996) (quoting *Folsom v. County of Spokane*, 111 Wn.2d 256, 263-64, 759 P2d 1196 (1988)).

But putting that aside, the effect of the trial court's granting of summary judgment and to issue an injunction during the first round was to avoid a trial. The purpose of a summary judgment is to avoid a useless trial[26]. So if Flores wanted to assert a claim for rescission, he needed to do so before the court granted a final judgment.

Because the trial judge was ready to rule at the 2008 summary judgment proceeding, that proceeding was trial for purposes of Flores electing whether to rescind. The material facts were never disputed in this action. The issues have always been legal ones. Had Flores wanted to elect rescission, he should have done so during the 2008 summary judgment proceeding prior to the short plat being approved on April 8, 2009 as a product of the summary judgment ruling. His failure to timely elect his remedy, or to demand rescission, meant he waived his right to later seek such relief, especially since the statutory grounds for rescission ceased to exist after April 8, 2009.

1. The Sole Supreme Court Decision cited by Flores actually Supports the Court of Appeals' Decision.

The sole Supreme Court decision cited by Flores actually supports the Court of Appeals' decision below. Petitioner's Petition side steps Flores' failure to elect rescission prior to the platting violation being cured and cites instead general cases regarding election of remedies at trial. He also misstates the election of remedies law, and its purpose.

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[26] See *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998).

The "sole purpose" of the election of remedies doctrine is to "prevent double redress for a wrong.[27]" The present action does not involve double redress for a harm; the key legal issue was whether Flores could choose rescission under RCW 58.17.210 three years after the Hoggatts cured the Property's platting violation. The election of remedies doctrine is inapplicable to the present action.

Flores has provided *McKown v. Driver*, 54 Wn.2d 46, 337 P.2d 1068 (1959) as the single Supreme Court decision to support his claim the Court of Appeals' decision below contradicts Supreme Court precedent. But there, the buyers failed to choose a specific remedy that they later regretted. The Supreme Court specifically stated that "the court's choice [of remedy options] became the McKown's choice" of remedy.[28]

This is precisely what happened here. When it became clear Flores would not assist the Hoggatts in signing the short plat application, the Hoggatts moved for summary judgment, essentially asking the trial court to either require Flores' cooperation in making the Property legal or to order Cowlitz County to accept the short plat application without Flores' signature.

The trial judge had to make a final decision. Had Flores announced his intent to rescind the transaction before the trial judge rendered a decision, the court could have ordered title to the property be

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[27] *Birchler v. Castello Land Co.*, 133 Wn.2d 106, 112, 942 P.2d 968 (1997); *CHD, Inc. v. Boyles*, 138 Wn. App. 131, 140, 157 P.3d 415 (2007) (noting that the election of remedies has a "narrow scope" regarding its protecting against double redress for a single wrong and therefore found the rule inapplicable to the facts).

[28] *Id.* at 55.

reverted back to the Hoggatts and a ruling on summary judgment would not have been necessary. Flores would have been entitled to rescission damages and the Hoggatts would have been free to apply to short plat the property without Flores' signature.

The trial judge simply needed to know if Flores was electing rescission or not. But instead of giving a clear answer, Flores dodged the question and therefore assumed the risk of the court's choice of remedy for him.

By failing to demand rescission—or even cooperate with the trial judge, Flores essentially placed the trial judge in the position of choosing the appropriate remedy, and the trial court ordered Cowlitz County to accept the Hoggatts' short plat application without Flores' signature. "[T]he [Cowlitz County trial] court's choice became [Flores'] choice." The *McKown* decision actually supports what the trial court and Court of Appeals did in this action.

2. Flores failed to Seek a Supersedeas Bond.

Following the trial court's summary judgment ruling, Flores failed to seek a supersedeas bond under RAP 8.1 to prevent the Hoggatts from curing the Property's plat violation until the matter could be heard on appeal. The Hoggatts cured the platting violation under the trial court's injunction. This was completed even before the Court of Appeals issued its first decision in *Hoggatt I*.

Had Flores obtained a supersedeas bond, he may have been able to preserve his right to rescind his purchase under RCW 58.17.210. Further, if Flores had really wanted to rescind the transaction, he should have petitioned for review of *Hoggatt I* on the basis that only he, not the Hoggatts, had authority or responsibility to cure the platting defect under RCW 58.17.210. He should have also challenged the trial court's insistence that Flores elect his remedy.

Because Flores failed to petition for review, or raise the election of remedies issue, the *Hoggatt I* decision became the law of the case.[29] And by curing the platting problem, the Hoggatts legally removed the basis for rescinding the conveyance **before** Flores clearly sought recission.

Flores' Petition in this action should be viewed as a collateral attack upon Division I's decision that upheld the Hoggatts' right to cure the platting violation, and to that extent, should be rejected.

In summary, Flores' Petition is not about any existing conflict between the Court of Appeals and other Washington cases. Flores is asking for help in the Supreme Court because he: (i) Failed to choose his remedy during summary judgment when the trial court had to decide regarding the rescission remedy; (ii) failed to obtain a supersedeas bond prohibiting the Hoggatts from fixing the plat violation; (iii) failed to petition for review of *Hoggatt I*; and (iv) failed to demand rescission until three years after the Property's short plat was approved.

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[29] *State*, 129 Wn2d at 425.

D. The Court of Appeals' Decision is Not in Conflict with another Decision of the Court Appeals.

The Court of Appeals' decision below is also not in conflict with any other decision of the Court of Appeals. As noted above, the decision wholly follows Division I's decision in *Hoggatt I.*

Flores fails to cite a single case where the Court of Appeals allowed a purchaser to rescind a transaction after the platting violation giving rise to the right to rescind was cured. Such a case simply does not exist in Washington jurisprudence, and for good reason. Flores' position does not comply with the plain language of the statute, and would create a rule of law so nonsensical, that the purpose of the platting statute for which the remedy was created would not be served. Instead of focusing on protecting the public health and welfare, which the platting statute does, Flores' requested interpretation of the statute would focus on getting back at the mistaken and innocent seller—even years after the underlying nonconformity is cured. That is not the stated purpose of the subdivision statutes.

Further, the two Court of Appeals decisions cited by Flores are also supportive of the decision below. As stated in *McKown*, when an action involves the issue of election of remedies, "the court's choice becomes the pleading party's choice" when the pleading party fails to "withdraw either one of his theories for recovery" when the trial court is ready to enter judgment—in this case summary judgment which would

affect Flores' right to rescind.[30] Flores failed to rescind the transaction when the trial judge was ready to rule on summary judgment—furthermore, he failed to enjoin the order or otherwise prohibit the short plat from being approved.

CHD, Inc. v. Boyles, 138 Wn. App. 131, 157 P.3d 415 (2007) likewise follows the Court of Appeals' decision below. There, a secured party instituted a nonjudicial foreclosure proceeding. Prior to the trustee sale, the borrower brought a declaratory judgment action to contest the underlying debt. However, **the borrower did not attempt to enjoin the trustee sale and the property was sold to a third party**. The *Boyles* court held that the borrower waived its statute of limitations defense by not employing the statutory presale remedies contained within RCW 61.24.

The posture of the present action is very similar to that of *Boyles*. Flores had a statutory right to seek damages for the platting violation, or as an alternative to making the property conform to the platting statutes, he could seek rescission. He failed to affirmatively elect either remedy upon summary judgment. He waived his right to demand rescission when the platting violation was subsequently cured (with absolutely no help from Flores, he only being "instransigen[t]"[31]), removing the equitable remedy from Flores' options.

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[30] *Stryken v. Panell*, 66 Wn. App. 566, 571, 832 P.2d 890 (1992).
[31] *Hoggatt II*, P. 9.

V. CONCLUSION

Hoggatt agrees that Flores probably had a right under the statute to seek rescission at the outset of this case. But he needed to promptly and unequivocally exercise that right instead of trying to use those rights as a hammer over the Hoggatt's head. He at least needed to stop playing games when the trial court flat-out asked if he wanted to rescind the transaction.

Division I and Division II were right in their construction of the statute and rejected Mr. Flores' attempts to circumvent the purpose of the law. Division II was correct to apply the longstanding rule of law that requires a party that seeks rescission, to promptly and unequivocally demand that relief.

There is no good reason for this court to further review these proceedings.

DATED this 25th day of March, 2015.

Respectfully Submitted,

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STATE OF WASHINGTON)
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I, Melinda Bruzzone, being first duly sworn on oath, depose and state that I am now and at all times herein mentioned was, a citizen of the United States, a resident of the State of Washington, and over the age of 21 years.

On the 25th day of March, 2015, a copy of **RESPONDENTS' ANSWER TO PETITION FOR REVIEW** was delivered via email and First Class United States Mail, postage prepaid, to the following person(s):

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MELINDA BRUZZONE

SUBSCRIBED AND SWORN to before me this 25th day of March, 2015 by MELINDA BRUZZONE.

LINDA M. GILL
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXP.
MAY 28, 2016

NOTARY PUBLIC for the State of Washington, Residing in the County of Clark.
My Commission Expires: 5-28-16

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Subject: Flores v. Hoggatt

Attached for filing please find Respondents' Answer to Petition for Review. Thank you.

Case Name: Flores v. Hoggatt

Supreme Court Case No. 91340-4

Filed By:

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