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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2017 OCT -3 PM 2:42

NO. 71544-5-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

BEL AIR & BRINEY, A General Partnership; NICK BRINEY, A
Single Man; and ROGER BELAIR, A Married Man,

Appellants,

and

CITY OF KENT,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE ANDREA DARVAS

SUPPLEMENTAL REPLY BRIEF OF APPELLANTS

THE HUNSINGER LAW FIRM
Attorney for Appellants BEL AIR &
BRINEY; NICK BRINEY; AND
ROGER BELAIR

By: MICHAEL D. HUNSINGER
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ORIGINAL

For the last time:

The parties agree that the City of Kent is entitled to the relief of equitable subrogation only if it prevents a windfall to Bel Air & Briney and it will not materially prejudice Bel Air & Briney. See for example, page 13 of the City of Kent's Response Brief.

Even if granting an equitable lien to the City of Kent were necessary to prevent a windfall to Bel Air & Briney, it is not necessary to allow the City to foreclose on that lien to prevent a windfall, and it would materially prejudice Bel Air & Briney. The City of Kent convinced the Trial Court that granting the lien was necessary because it would leave Bel Air & Briney in the same position it was in before the City paid off the first deed of trust when it purchased the Property: holding a second deed of trust behind a first deed of trust that was not in default. That is the erroneous basis for the Trial Court's conclusion that granting the lien averted a windfall to Bel Air & Briney.

However, allowing the City to foreclose on a lien that kept Bel Air & Briney's deed of trust in second position on property that was worth less than the \$197,000 first lien held by the City of Kent could not possibly be necessary to avert any windfall somehow still

retained by Bel Air & Briney, which would be materially (in fact mortally) prejudiced by the relief because it would wipe out any chance for Bel Air & Briney to receive any money from the foreclosure sale.

There is a perfect solution, and only one solution, to this dispute that is equitable to everybody. The City of Kent agrees with Bel Air & Briney that the cause of this debacle was the error committed by its title insurer, now First American Title Insurance Company ("First American Title"). But for First American Title's inexplicable failure to discover the existence of the Bel Air & Briney second deed of trust before the completion of the City of Kent's purchase of the Property from Tran, Bel Air & Briney's debt would have been paid in full from the purchase price. Instead, Tran received Bel Air & Briney's \$143,300. First American Title is contractually obligated to compensate its insured, the City of Kent, for any losses the latter suffers as a result of such an error.

The only equitable solution is to deny the City's request for equitable subrogation, which would force the one who caused this fiasco in the first place, First American Title, to fully compensate the City for its losses, and which would provide Bel Air & Briney the opportunity to attempt to recover a small portion of what it lost as a

result of First American Title's incompetence.

The alternative is to uphold the Trial Court's orders, which would not only victimize Bel Air & Briney but notify all title insurance companies doing business in the state of Washington that they can continue to collect premiums and issue faulty insurance policies which cause serious financial harm without having to bear any responsibility for that damage. Where is the equity in that?

DATED this 3rd day of October, 2014.

THE HUNSINGER LAW FIRM
Attorneys for Appellants

By: 

MICHAEL D. HUNSINGER
WSBA NO. 7662

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 3, 2014, I arranged for service on or before October 3, 2014 the foregoing Supplemental Reply Brief of Appellants to the Court and to opposing counsel to this action as follows:

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VIA MESSENGER

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VIA EMAIL AND
MESSENGER

DATED this 3rd day of October, 2014, at Seattle, Washington.



CAMILLE CAMPBELL MILLS