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SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 71544-5-1

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

CITY OF KENT,

Appellant,

and

BEL AIR & BRINEY, a general partnership; NICK BRINEY, a single
man; and ROGER B. BEL AIR and CANDACE A. BEL AIR, husband
and wife,

Respondents.

REPLY IN SUPPORT OF PETITION FOR REVIEW

Thomas F. Peterson, WSBA #16587
Eleanor H. Walstad, WSBA #44241
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Attorneys for City of Kent

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 ORIGINAL

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I. INTRODUCTION

The Court of Appeals' decision has two parts. In the first part, based on well-established law, the Court of Appeals affirmed the grant of an equitable lien in favor of Kent. In the second part, the Court of Appeals denied Kent the right to foreclose that lien. Kent only sought review of the second part of the decision regarding the remedy of a party entitled to equitable subrogation. Bel Air & Briney acknowledges that the second part of the decision is a case of first impression. Although Bel Air & Briney generally does not question the first part of the decision, it arguably seeks review of it, in a single, short paragraph buried deep within its brief. Kent hereby files this reply and urges the Court not to accept review of the first part of the Court of Appeals' decision because it is soundly based on a consistent line of cases from this Court and appellate courts.

II. ARGUMENT

Bel Air & Briney states that the second part of the Court of Appeals' decision, which denies Kent the right to foreclose its equitable lien, is a matter of "first impression" that is presented "for the first time in the history of the state of Washington." (Answer at p. 24.) Besides its argument that the courts have not addressed whether and how an equitable lien is foreclosed, Bel Air & Briney's Answer is a rambling reiteration of

its arguments on the merits. In effect, Bel Air & Briney acknowledges that this Court should accept review of the second part of the decision.

Bel Air & Briney does not identify any issue for which it seeks review in its Introduction or Issues Regarding the Assignment of Error. Instead, it appended a short paragraph at the end of Section D of its brief requesting review of the first part of the decision. Yet this paragraph does not set out the standard for which review is warranted or any analysis.

The first part of the Court of Appeals' decision does not present any conflict, constitutional question, or issue of public interest. RAP 13.4(b). Contrary to Bel Air & Briney's one line of argument, there is no issue of public interest at stake. Kent's title insurance company is not a party in this case. The record was not developed regarding scope of coverage, possible reservation of rights, subrogation rights, or any other issue related to insurance. The trial court judge and the three appellate court judges all agreed that title insurance has no bearing on the decision of this case. (*Bel Air & Briney v. City of Kent*, 358 P.3d 1249, 2015 WL 5330512 at *1-6; Sub No. 47, CP 282-284, 4/9/2014 Order.) Title insurance is available in virtually every real estate transaction; its existence in this case does not create a public interest in a different result.

RAP 13.4(b)(4)

There is no conflict between the first part of the Court of Appeals' decision and any decision of the Supreme Court. RAP 13.4(b)(1). *Columbia Cmty. Bank v. Newman Park, LLC*, 177 Wn.2d 566, 304 P.3d 472 (2013) (granting equitable subrogation); *Bank of Am., N.A. v. Prestance Corp.*, 160 Wn.2d 560, 160 P.3d 17 (2007) (same). There is also no conflict with any appellate decisions. RAP 13.4(b)(2). See, eg., *Worden v. Smith*, 178 Wn. App. 309, 314 P.3d 1125 (2013) (granting equitable subrogation).

Finally, there is certainly no significant question of law under the Constitution of the State of Washington or of the United States. RAP 13.4(b)(3).

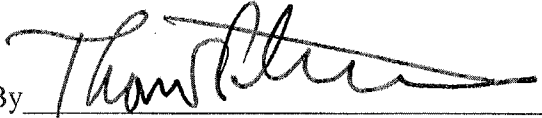
There is nothing warranting review of the first part of the Court of Appeals' decision affirming the application of equitable subrogation to create an equitable lien in favor of Kent.

III. CONCLUSION

Kent respectfully requests that the Court deny Bel Air & Briney's request for review of the first part of the Court of Appeals' decision to award equitable subrogation to Kent. Instead, for the reasons stated in its Petition for Review, Kent requests that the Court grant review of the second part of the Court of Appeals' decision which denies a remedy for equitable subrogation and thereby eviscerates the doctrine altogether.

Respectfully submitted this 30th day of November, 2015.

SOCIUS LAW GROUP, PLLC

By 

Thomas F. Peterson, WSBA #16587
Eleanor H. Walstad, WSBA #35517
Attorney for Petitioner City of Kent


CERTIFICATE OF SERVICE

I certify that on the 30th day of November, 2015, I caused a true and correct copy of this Reply in Support of Petition for Review to be served on the following in the manner indicated below:

Counsel for Appellants:

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Marissa Lock, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Marissa Lock
Cc: Tom Peterson; Eleanor Walstad; mike@hunsingerlawyers.com; Linda McKenzie
Subject: RE: City of Kent, Appellant and Bel Air & Briney et al., Respondents - Petition for Review, COA #71544-5-1

Received on 11-30-2015

Supreme Court Clerk's Office

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Cc: Tom Peterson <tpeterson@sociuslaw.com>; Eleanor Walstad <ewalstad@sociuslaw.com>;
mike@hunsingerlawyers.com; Linda McKenzie <lmckenzie@sociuslaw.com>
Subject: City of Kent, Appellant and Bel Air & Briney et al., Respondents - Petition for Review, COA #71544-5-1

Re: City of Kent v. Bel Air & Briney, a general partnership; Nick Briney, a single man; and Roger B. Bel Air and Candace A. Bel Air, husband and wife

COA No. 71544-5-1

Supreme Court Clerk:

Please accept the attached Reply in Support of Petition for Review for filing by email. I understand that you do not require the original signed Petition to be sent to you. Please confirm that I am correct on this. Counsel for Respondents is copied herein.

Sincerely,

Marissa Lock, Legal Assistant to Thomas F. Peterson and Eleanor H. Walstad, Attorneys for Appellant, City of Kent

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