No. 47482-4-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CHRISTOPHER GUEST AND SUZANNE GUEST,
Appellants,
v.
DAVID LANGE AND KAREN LANGE,
Respondents.

THE COE FAMILY TRUST and Trustee Michael Coe,
Interveners/Respondents
v.
CHRISTOPHER GUEST AND SUZANNE GUEST,
Respondents/Appellants,

CHRISTOPHER GUEST AND SUZANNE GUEST,
Appellants,
v.
MICHAEL COE and CAROL COE, and CAROL ANN WHITE and
JOHN L. WHITE,
Respondents

RESPONDENTS' DAVID AND KAREN LANGE'S BRIEF

Irene M. Hecht, WSBA #11063
Maureen M. Falecki, WSBA #18569
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, Washington 98101-3052
Telephone: (206) 623-1900
Facsimile: (206) 623-3384
Attorneys for Respondents Lange

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Wahsington State Cases

Federal Cases

State Statutes

Rules

Other Authorities

I. INTRODUCTION

This is the second of two appeals currently pending before this Court arising out of a lawsuit the Appellants, Christopher and Suzanne Guest, filed against their neighbors, Respondents, David and Karen Lange, four years ago alleging that a small portion the Langes' backyard deck trespassed on the Guests' property. In the first appeal (Court of Appeals No. 46802-6), the Guests seek review of the trial court's dismissal of some of the Guests' claims on summary judgment and the judgment entered against the Guests following the jury's determination at trial that the Langes' deck did not trespass on the Guests' property. In this appeal, the Guests seek review of the trial court's post-trial order cancelling the lis pendens the Guests had filed against the Langes' property during the pendency of the litigation.

After the jury determined that the Langes' deck did not trespass on the Guests' property, and judgment was entered dismissing the Guests' claims against the Langes, the Langes sought to refinance the mortgage on their home. While the bank conditionally approved the new loan, it could not close on the loan because the lis pendens the Guests had filed created a cloud on the Langes' title to their property. Consequently, the bank was unable to obtain the required title insurance for the refinance. The Langes were thus forced to file a Motion to Cancel the Lis Pendens so that they could secure their refinance.

Under Washington law, a lis pendens does not create any substantive rights in the person filing it, nor does it create an equitable lien in the property. Instead, a lis pendens is merely a procedural tool for giving notice that a lawsuit concerning real property has been filed. Thus, once an action has been "settled, discontinued or abated," and the moving party shows good cause, a trial court is authorized to order that a lis pendens be cancelled. RCW 4.28.320. In this case, once the judgment was entered resolving all remaining claims in the Langes' favor, the action was concluded, or otherwise "settled, discontinued or abated," and because the Langes established good cause for cancelling the lis pendens, the trial court properly exercised its discretion and entered an order cancelling the lis pendens.

The fact that the Guests filed an appeal and rushed to the court house to post a $1000.00 supersedeas bond one day before the hearing on the Langes' Motion to Cancel the Lis Pendens has no effect on the lis pendens or on the trial court's authority to order that it be cancelled. A supersedeas bond has the effect of staying execution of a judgment only, it does nothing to alter the judgment and it does not destroy the intrinsic effect of a final judgment. The judgment remains the measure of the parties' rights. In this case, the judgment that was entered against the Guests did not create any substantive rights in the Guests and it did not give them a property interest

in the Langes' deck. Likewise, the lis pendens did not give the Guests any rights to the Langes' deck. Consequently, the supersedeas bond did not freeze the lis pendens nor did it strip the trial court of its authority to cancel the lis pendens. Thus, the trial court properly ordered that the lis pendens be cancelled and its order should be affirmed.

The Guests' remaining issues on appeal are likewise not supported by the law. The Guests ask this Court to remand and instruct the trial court to allow extensive and invasive discovery into the Langes' personal financial matters, should the Court vacate the order cancelling the lis pendens, and hence require a new supersedeas bond be posted. However, the Guests fail to provide citation to any Washington law or court rule authorizing the requested post-trial discovery. Moreover, the trial court never ruled on the Guests' motion for leave to conduct discovery after it cancelled the lis pendens and set the supersedeas amount, because those rulings vitiated or rendered moot, the Guests' alleged need to investigate the Langes' damages as a result of the lis pendens. Thus, there is no trial court ruling for this Court to consider on appeal.

The Guests also claim the trial court erred in not striking Mr. Langes' testimony regarding the failed refinance caused by the lis pendens, but they have not, nor can they, establish that any alleged error was prejudicial. The same evidence the Guests sought to strike was admitted

through the loan officer handling the refinance, and the Guests did not object to that evidence. The Guests have also failed to provide this Court with any contract, statute, or recognized ground in equity upon which it could award the requested attorney fees to the Guests. Accordingly, the trial court's order should be affirmed and the Guests' appeal should be dismissed.

Finally, it is important to note that if this Court affirms the summary judgment order and the judgment entered in favor of the Langes in the first appeal (Court of Appeals No. 46802-6), the issues raised in this appeal, all of which address post-trial motions connected with the pendency of the issues in that first appeal (Court of Appeals No. 46802-6), will be rendered moot.

II. STATEMENT OF ISSUES

A. Whether the trial court properly exercised its discretion under RCW 4.28.320 by cancelling the lis pendens when (1) the lis pendens did not create any substantive rights in the Guests; (2) the entry of the judgment in the Langes' favor discontinued, abated and/or settled the action; (3) the Langes were prejudiced by the lis pendens; and (4) the supersedeas bond operated only to stay enforcement of the judgment? (Appellants' Assignment of Error 1)

B. Whether the Court should reject the Guests' request on remand to order the trial court to authorize the Guests to conduct invasive discovery into the Langes' personal finances when (1) the discovery issue is not ripe for review because the trial court did not rule on the issue as it was rendered moot; and (2) even if the issue is ripe for review, the Guests failed to provide citation to any legal authority to authorize the invasive discovery they seek? (Appellants' Assignment of Error 2)

C. Whether the trial court court's alleged error in failing to rule on the Guests' motion to strike alleged hearsay testimony from Mr. Lange was harmless error when the same evidence was admitted through the Umpqua Bank Loan Officer and the Guests did not object to that evidence? (Appellants' Assignment of Error 3)

D. Whether the Court should reject the Guests' request for attorney fees when there is no contract, statute or recognized ground in equity upon which to base such an award? (Appellants' Assignment of Error 4)

III. STATEMENT OF THE CASE

A. Facts Leading Up to the Underlying Litigation.

The Langes and the Guests currently own adjacent lots in the planned unit development neighborhood of Spinnaker Ridge in Gig Harbor;

the Langes own Lot 4 and the Guests own Lot 5.[1] When the Langes purchased their home in 1993, it had a deck located in the space between their property and their neighbor's property.[2] Eleven years later, in 2004, the Guests purchased the home next to the Langes.

Both properties are subject to recorded CC&Rs and a "Patio or Deck Easement."[3] The Langes' property is benefitted by a Patio or Deck Easement over the Guests' Lot 5; the Guests' property is similarly benefited by a Patio or Deck Easement over the adjoining Lot 6.[4] The Patio or Deck Easement benefitting the Langes' property reserves an easement to a small area of land, measuring 5' x 21', on Lot 5 for a patio or deck.[5] In addition, the CC&Rs include a blanket encroachment provision allowing for unintentional minor encroachments by a deck or patio over all adjoining lots and common areas beyond the boundaries of the Patio or Deck Easement.[6]

---

[1] CP 512, ¶2.

[2] *Id.* at ¶¶3-4. Many of the other homes in Spinnaker Ridge have similar deck configurations. *Id.* at ¶6; CP 10-12.

[3] CP 320, ¶2; 421, ¶¶3-5; CP 323-325. All of the owners of homes in the Spinnaker Ridge development are subject to recorded CC&Rs and a series of easement grants and reservations affecting lots in the development. CP 320-321; 323-337.

[4] CP 321, ¶6; CP 335-337.

[5] CP 321, ¶5; CP 333-334. The Patio or Deck Easement is referred to in Appellants' Brief as the "1987 Recorded Document."

[6] CP 320, ¶2; CP 323-324; The CC&Rs are recorded under Pierce County Auditor's No. 8608080472. *Id.* The Encroachment Easement was likewise included in the amended and restated CC&Rs at paragraph 15.4, recorded under Pierce County Auditor's No. 200705290274. CP 321, ¶3; CP 326-329.

Over the years, the Langes' deck suffered extensive deterioration and water damage. In April 2011, they rebuilt the deck. The deck was rebuilt in the same location and in the same footprint as it had when the Langes' purchased their home eighteen years earlier.[7]

On December 6, 2011, the Guests filed this lawsuit against the Langes, claiming the Langes' deck improperly encroached on the Guests' property beyond the Patio or Deck Easement.[8] The Guests asserted claims for breach of contract, breach of the covenant of good faith and fair dealing, trespass, and indemnity.[9] In their Answer, the Langes denied the Guests' claims and counterclaimed to quiet title in the disputed deck area.[10] On January 16, 2013, the Guests filed a lis pendens in the trial court clouding title to the Langes' property, and subsequently filed the lis pendens with the Pierce County Auditor.[11]

B. The Trial Court Dismissed The Majority Of The Guests' Claims On Summary Judgment And The Jury Returned A Defense Verdict In The Langes' Favor On The Remaining Claims.

On March 22, 2013, the Honorable Ronald Culpepper dismissed the majority of the Guests' claims on summary judgment, as a matter of law

---

[7] CP 517, ¶21.
[8] CP 486-489.
[9] CP 490-499.
[10] CP 500-511.
[11] CP 7-10.

and with prejudice.[12] The issues that remained for trial were limited to a breach of contract claim and a trespass claim as to a 3' x 5' area of the Langes' deck. The Langes denied they entered into a contract with the Guests, and further argued that the small 3' x 5' area of their deck was authorized by the encroachment easement in the CC&Rs.

After a six-day jury trial between July 8, 2014 and July 16, 2014, the jury returned a defense verdict in the Langes' favor.[13] The jury specifically found that the 3'x 5' area of the Langes' deck did not trespass on the Guests' property and that the Langes did not breach a contract with the Guests.[14].

After the trial court denied the Guests' post-trial motions, final judgment was entered dismissing the Guests' claims with prejudice and quieting title in the Langes to "exclusively use, maintain, repair and replace the deck . . . as it now exists against any claim of the plaintiffs."[15] The judgment also awarded the Langes statutory attorney fees and costs in the amount of $565.00.[16]

---

[12] CP 549-553.

[13] CP 554-555.

[14] *Id.*

[15] CP 87-88.

[16] *Id.* On October 20, 2014, the Guests filed a notice of appeal, seeking review of twenty-two (22) trial court orders and/or rulings, plus review of fourteen (14) jury instructions. CP 24-26. The Guests filed a second notice of appeal on November 26, 2015, seeking review of the trial court's order denying their post-trial motions. CP 30. That appeal is currently pending in this Court, under Cause No. 46902-6 – II.

C. After Judgment Was Entered In Their Favor, The Langes Sought To Refinance Their Home, But The Lis Pendens Prohibited Them From Securing The Refinance.

After judgment was entered in their favor, the Langes applied to refinance the mortgage on their home with Umpqua Bank.[17] The Langes sought to refinance so that they could withdraw approximately $30,000 of equity; they wanted to use approximately $20,000 to pay off two bills which were carrying high interest rates, and use $10,000 to remodel their kitchen.[18] Refinancing would also allow the Langes to obtain a more favorable mortgage interest rate which, in turn, would significantly reduce their monthly mortgage payments.[19]

Umpqua Bank approved the Langes' request for refinancing, which was scheduled to close at the end of February 2015.[20] However, before the loan closed, the loan officer at Umpqua Bank told the Langes that the lis pendens prohibited the bank from obtaining title insurance which was required to complete the refinance.[21] The loan officer told the Langes that the refinancing could not be secured unless the lis pendens was released.[22]

---

[17] CP 73-76.

[18] *Id.*

[19] *Id.* By refinancing, the Langes would save $374.18 a month on the loan alone, or $4,490.16 a year, for a total savings of $134,704.80 over the life of the loan. CP 75, ¶3.

[20] CP 73-75; CP 122-124.

[21] CP 74-75; CP 122-124; CP 126-139.

[22] CP 75; CP 122-124.

D. Post Judgment Motions.

Because the lis pendens was preventing the Langes' from securing their requested refinance, the Langes filed a motion to cancel the lis pendens on February 26, 2015, pursuant to RCW 4.28.320.[23] The motion was noted for hearing the following week, on March 6, 2015.

The Guests opposed the motion arguing that the judgment entered against them was not "final" because the Guests had filed a notice of appeal.[24] They also argued that because they intended to file a supersedeas bond, the trial court would have no authority to cancel the lis pendens.[25] The day before the hearing on the motion to cancel the lis pendens, the Guests submitted a $1000.00 cashier's check to the Pierce County Superior Court Clerk, claiming the funds were to be held as a bond to supersede the judgment entered in favor of the Langes.[26] They also submitted a $3000.00 cashier's check that same day claiming those funds were intended to supersede an Order entered against them on April 11, 2014.[27] That Order imposed terms of $2000.00 against the Guests for noncompliance with a previous court order.[28]

---

[23] CP 1-10.
[24] CP 12-16.
[25] CP 15-16.
[26] CP 42-43.
[27] CP 45-46.
[28] RP March 27, 2015, 16:11-23.

At the hearing to cancel the lis pendens, the Guests did not dispute that under Washington law, the lis pendens they filed against the Langes' property did not provide the Guests with any substantive rights.[29] Instead, the Guests' argued that the lis pendens should not be cancelled because it provided constructive notice to potential purchasers that the Guests had a dispute with the placement of the Langes' deck:

> The lis pendens provides constructive notice to the potential purchaser, incumbrancer. . . . [If] this Court is to cancel the lis pendens, [the Guests] are going to lose that constructive notice for the intervening period.[30]

The Guests also argued that because they filed the supersedeas the previous day, the trial court no longer had the authority to lift the stay.[31]

The trial court, the Honorable Stanley J. Rumbaugh, disagreed, noting that under the law, the Langes had seven (7) days to object to the supersedeas, and therefore, the trial court was tasked with determining whether or not the supersedeas bond the Guests posted was sufficient to stay execution of the judgment.[32] As a result, so that the court could address and consider the issue of the amount and sufficiency of the cash supersedeas bond the Guests posted, at the same time as it considered the Motion to

---

[29] RP March 6, 2015, 4:11-12.
[30] RP March 6, 2015, 5:3-4; 9-10.
[31] RP March 6, 2015, 5:18-19.
[32] RP March 6, 2015, 7:5-15.

Cancel the Lis Pendens, the court continued the Motion to Cancel the Lis Pendens.[33] Specifically, the trial court wanted to fully understand and quantify the harm to the Langes that would result if the lis pendens was not lifted.[34]

Thereafter, the Langes filed a Motion Objecting to the Amount and Sufficiency of the Cash Supersedeas the Guests posted, arguing that the $1000.00 supersedeas bond was entirely insufficient to cover the damage to the Langes caused by the lis pendens.[35] The Langes' evidence established that the lis pendens was preventing the Langes from obtaining their requested refinance, costing them $134,704.80 from the loss of a more favorable interest rate on a refinance and the loss of lower mortgage payments; the lis pendens was preventing the Langes from being able to withdraw $20,000 in equity from their home to pay off bills subject to a high interest rate; and finally, the lis pendens was preventing the Langes from remodeling their kitchen.[36] The Langes thus requested that if the lis pendens was not cancelled, the Guests be ordered to post a supersedeas bond in the amount of $215,000 to ensure that the Guests had the funds available

[33] RP March 6, 2015, 7:22-15; 8:1-24.
[34] RP March 6, 2015, 8:7-16.
[35] CP 58-92.
[36] CP 61-66; CP 73-75.

to pay all damages and loss that would result to the Langes by their inability to refinance.[37]

The Guests moved to strike portions of Mr. Langes' declaration claiming his statements regarding the failed refinance were hearsay.[38] The Guests also filed a Motion for Leave to Conduct Discovery, seeking leave of the court to subpoena the Langes' personal financial records and the records from Umpqua Bank, as well as records from "any other entity learned to be involved in the alleged refinance attempt," and to conduct "perpetuation depositions" of the Langes, the title officer, and/or the loan officer.[39] According to the Guests, they were somehow entitled to this invasive discovery to investigate the Langes' claim of damages resulting from the continued presence of the lis pendens.[40]

Not surprisingly, the Langes objected to the invasive and improper discovery, arguing that the Guests had no legal right to use the court's powers to force the Langes or any financial institutions to turn over the Langes' private financial records to the Guests, or to be deposed with respect to the Langes' finances.[41]

---

[37] CP 60; 65.
[38] CP 143, 149.
[39] CP 93-104.
[40] *Id.*
[41] CP 106-116.

All three motions - Langes' Motion to Cancel Lis Pendens, Langes' Motion Objecting to Amount and Sufficiency of Cash Supersedeas, and Guests' Motion to Compel Discovery - were argued on March 27, 2015.

The trial court first addressed the Motion to Cancel the Lis Pendens. The court implicitly recognized that the Langes would be prejudiced if the lis pendens was not cancelled because the lis pendens was preventing them from obtaining the refinancing they desired.[42] The trial court also determined that the Guests would not be damaged if the lis pendens was cancelled because it was undisputed that the lis pendens filed by the Guests did not create any property or substantive rights in the Guests, and it was undisputed that the purpose of the lis pendens was merely to provide notice to a third party that there was a dispute with regard to the property:[43]

> THE COURT: Lis pendens is only for purpose of notice. It notifies potential purchasers or others in the community that there is a potential cloud on the title. It doesn't create any substantive rights in anybody's --
>
> MR. SELBY: That's absolutely correct[.][44]

Further, as the trial court explained, if the Langes sought to convey or otherwise sell their property, the Guests had no standing to object to the

---

[42] RP March 27, 2015, 4:14-25; 5:1.

[43] RP March 27, 2015, 6:5-8; 6:16-20; 8:4-8.

[44] RP March 27, 2015, 6:5-9. Mr. Selby was one of two counsel present at the hearings on behalf of the Guests.

sale, regardless of the presence of the lis pendens.[45] Any purchaser would take the property subject to any title deficiencies because the Langes would be obligated to disclose the dispute, whether or not the lis pendens was in place.[46]

> THE COURT: And, of course, in the event that the case is somehow reversed or there is some decision by the Appellate Court that would affect the title to the property, that is probably something that if the Langes chose to convey their property, it would have to be disclosed.
>
> They would be responsible for nondisclosure.[47]
>
> . . .
>
> THE COURT: If the Langes chose to convey their property to a third party, they could do so. They would be responsible for any defects in title as a result of that transfer. The Guests wouldn't be affected by that in any way.[48]

Thus, recognizing the prejudice to the Langes caused by the lis pendens, the fact that the lis pendens did not create any substantive rights in the Guests, and the fact that the Guests' interest to put third parties on notice of the dispute would be protected regardless of the lis pendens, the trial court granted the Langes' motion to cancel the lis pendens.[49]

---

[45] RP March 27, 2015, 6:16-20; 8:4-8. Mr. Selby was one of two counsel present at the hearings on behalf of the Guests.
[46] RP March 27, 2015, 8:11-13.
[47] RP March 27, 2015, 5:3-10
[48] RP March 27, 2015, 6:16-20.
[49] RP March 27, 2015, 16:7; CP 222-223.

Since the order cancelling the lis pendens eliminated the Langes' refinancing issues and damages, the court next resolved the issue of the proper amount of supersedeas bond needed to stay enforcement of the judgment entered against the Guests. On this issue, the trial court determined that the $4000.00 in cash supersedeas bonds the Guests' had posted were together sufficient to stay enforcement of the judgment and the April 11, 2014 Order entered against them.[50]

Finally, because the lis pendens was ordered cancelled, and the supersedeas bond was set at $4000.00 to stay enforcement of the judgment, the court's orders on lis pendens and supersedeas rendered moot, or otherwise vitiated the Guests' motion that sought to conduct the invasive discovery into the Langes' private financial affairs.[51] The Guests have appealed from these orders.[52]

---

[50] RP March 27, 2015, 16:7-8.; CP 222-223. To arrive at that amount, the trial court computed the loss of use damages for the 3' x 5' portion deck at $334.00, the attorney fee award imposed against the Guests in the amount of $565.00, and the Order imposing $2000.00 in terms against the Guests for noncompliance with a court order. RP March 27, 2015, 14:7-23.

[51] RP March 27, 2015, 16:20-22: CP 222-223; CP 216-220.

[52] CP 224-235.

IV. ARGUMENT

A. The Trial Court Properly Exercised Its Discretion When It Cancelled The Lis Pendens Following Entry Of Judgment.

RCW 4.28.320 authorizes a trial court to exercise its discretion and order cancellation of a lis pendens once the action has been "settled, discontinued or abated," and the moving party shows good cause to cancel. *Id.*

> The court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order that the notice authorized in this section to be cancelled of record . . . by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order.

Id.

In this case, the trial court properly exercised its discretion when it ordered that the lis pendens be cancelled after judgment was entered in favor of the Langes.

1. The Lis Pendens Did Not Create Any Substantive Rights In The Guests.

A lis pendens is not an assertion of a claim to property and it does not create any substantive rights in the person filing the lis pendens. *Chaudoin v. Claypool*, 174 Wash. 608, 610, 25 P.2d 1036 (1933); *Beers v. Ross*, 137 Wn. App. 566, 575, 154 P.3d 277, 282 (2007)(a lis pendens is

"procedural only; it does not create substantive rights in the person recording the notice"). Nor does a lis pendens create an equitable lien. *Dunham v. Tabb*, 27 Wn. App. 862, 866, 621 P.2d 179, 181 (1980). Instead, a lis pendens is merely a procedural tool for giving notice that a lawsuit concerning real property has been filed. *Chaudoin*, 174 Wash. at 610; *Merrick v. Pattison*, 85 Wash. 240, 246, 147 P. 1137 (1915).

> The lis pendens mechanism is not designed to aid either side in a dispute between private parties; rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, that is, the fact of a suit involving property. Thus, the purpose of a notice of lis pendens is to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of real property is involved in litigation.

51 Am. Jur. 2d *Lis Pendens* § 2 (2015)(internal citations omitted). A lis pendens has no practical effect on the substantive rights of any parties to the property. *Merrick*, 85 Wash. at 246.

2. The Entry Of The Judgment In The Langes' Favor Discontinued, Abated And/Or Settled The Action.

A lis pendens is a cloud on title to property. *Washington Dredging & Imp. Co. v. Kinnear*, 24 Wash. 405, 407, 64 P. 522 (1901). Therefore, after an action is concluded, the trial court may properly "clear the record" and order that a lis pendens be cancelled. *Cashmere State Bank v. Richardson*, 105 Wash. 105, 109, 177 P. 727 (1919); *In Re Home Savings & Loan Ass'n's Receivership v. Donahoe*, 189 Wash. 442, 445, 65 P.2d

1249 (1937)(holding that the trial court properly ordered that a lis pendens be cancelled because once a petition is dismissed, "the notice of lis pendens had no foundation upon which to rest").

In the present case, after entry of the judgment, the trial court properly exercised its discretion when it ordered that the lis pendens the Guests filed against the Langes' home be cancelled. The entry of a final judgment is "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment." *State v. Taylor*, 150 Wn.2d 599, 602, 80 P.3d 605 (2003), quoting BLACK'S LAW DICTIONARY 847 (7th ed. 1999). "A judgment is the final determination of the rights of the parties in the action.'" *Reif v. La Follette*, 19 Wn. 2d 366, 369, 142 P.2d 1015 (1943). A final judgment "puts an end to the action by declaring that the plaintiff has or has not entitled himself to recover the remedy for which he sues." *Reif*, 19 Wn.2d at 370, quoting 1 Black on Judgments, 2d ed., 31 § 21.

When a judgment is entered as to all claims or defenses, the case is at an end, although the judgment is subject to appeal. *See* Karl B. Tegland & Douglas J. Ende, *Washington Practice: Handbook on Civil Procedure* § 69.31, at 530 (2007); *Winchell's Donuts v. Quintana*, 65 Wn. App. 525, 530, 828 P.2d 1166 (1992)(explaining that in Washington, an appeal does

not suspend or negate the res judicata aspects of a judgment entered after trial in the superior courts), citing *Riblet v. Ideal Cement Co.*, 57 Wn.2d 619, 621, 358 P.2d 975 (1961); *see also, City of Des Moines v. Personal Property Identified*, 87 Wn. App. 689, 702, 943 P.2d 669 (1997)("a judgment becomes final for res judicata purposes at the beginning, not the end of the appellate process, although res judicata can still be defeated by later rulings on appeal"); *Nielson By and Through Nielson v. Spanaway General Medical Clinic, Inc.*, 135 Wn. 2d 255, 956 P.2d 312 (1998)(same).

Moreover, "[a]n appeal and supersedeas does not destroy the intrinsic effect of a judgment; notwithstanding the appeal, the judgment is still the measure of such rights of the parties as is adjudicated; and until reversed it operates as res judicata as effectively as it would had no appeal been taken and no supersedeas bond given." *State ex. Rel. Gibson v. Superior Court of Pierce County*, 39 Wash. 115, 117, 80 P. 1108 (1905).

To argue as the Guests do here that a final judgment entered after a jury verdict does not settle, abate or discontinue an action, defies both the law and common sense. That the Guests have filed an appeal from the judgment does nothing to change the fact that action has been concluded, judgment entered, and the rights of the parties established: the action has been "settled, abated and discontinued."

3. The Langes Were Prejudiced By The Lis Pendens Clouding Title To Their Property.

The Langes were prejudiced by the lis pendens that clouded their title. While Umpqua Bank conditionally approved the Langes' refinance request, the bank could not obtain title insurance to insure against any loss associated with the recorded lis pendens, and as a result, the bank refused to close on the loan unless the lis pendens was cancelled.[53] The lis pendens was the only reason the refinance could not be secured. Without the refinance, the Langes could not withdraw funds against their equity in the home to pay off high interest loans or remodel their kitchen. They could not obtain a lower mortgage interest rate or lower monthly mortgage payment. Thus, the Langes showed good cause for cancelling the lis pendens.

In sum, because the lawsuit was concluded, final judgment was entered in the Langes' favor, and the Langes showed good cause to cancel the lis pendens, the trial court properly exercised its discretion under RCW 4.28.320 and ordered that the lis pendens filed against the Langes' property be cancelled. The trial court's order should be affirmed.

---

[53] CP 73-74; CP 122-128.

4. The Supersedeas Bond Operated Only To Stay Execution of The Judgment, It Did Not Freeze The Lis Pendens, And It Did Not Strip The Trial Court Of Its Authority to Cancel The Lis Pendens.

Contrary to the Guests' unsupported assertion, a trial court has the authority to cancel a lis pendens when a supersedeas bond has been posted. *Cashmere State Bank v. Richardson*, 105 Wash. 105, 109, 177 P. 727 (1919)(although a supersedeas had been filed, the Court held that the trial court properly released a lis pendens). A supersedeas bond operates to stay enforcement of the judgment. The lis pendens is not part of the judgment. Thus, a supersedeas bond has no effect on a lis pendens and no effect on the court's authority to cancel the lis pendens.

RAP 8.1 governs the use and effect of supersedeas bonds. The rule "provides a means of delaying the enforcement of a trial court decision in a civil case." RAP 8.1. A supersedeas bond does not operate against a judgment but against its enforcement only. *Malo v. Anderson*, 786 Wn. 2d 1, 454 P.2d 828 (1969). The judgment remains the measure of the parties' rights – the supersedeas bond does not alter that judgment, and it does not destroy the intrinsic effect of a final judgment. *State ex. Rel. Gibson v. Superior Court of Pierce County*, 39 Wash. 115, 117, 80 P. 1108 (1905).

It is undisputed that the lis pendens did not provide the Guests with any substantive rights and it did not provide them with a right to use or

possess the Langes' deck, its purpose was merely procedural: to provide constructive notice to third parties of a dispute. *Chaudoin v. Claypool*, 174 Wash. 608, 610, 25 P.2d 1036 (1933); *Merrick v. Pattison*, 85 Wash. 240, 246, 147 P. 1137 (1915). The Guests' argue that the lis pendens "protected [their] right to possess and to use their Lot 5 real property," and gave them a "priority claim" on the Langes' deck. They claim this purportedly gives rise to a property interest which the supersedeas bond and resulting stay was intended to protect and preserve on appeal. But this is clearly contrary to settled Washington law that holds that the lis pendens does not create any substantive rights. Thus, their argument fail as a matter of law. Likewise, while RAP 8.1(b)(2) states that a party may obtain a stay of a decision affecting the right to use of real property by filing a supersedeas, the Guests have no right to use of the Langes' deck, and neither the lis pendens nor the supersedeas bond create any such rights.[54] Lifting the lis pendens does nothing to impair any rights that the Guests have under the judgment.

[54] In *Beers v. Ross*, 137 Wn. App. 566, 154 P.3d 277 (2007), the Court reiterated that the lis pendens did not give the plaintiffs any substantive property rights. The Court then questioned whether an order vacating a lis pendens could be stayed on appeal under RAP 8.1(b)(2) given that the lis pendens did not provide the plaintiff with any property rights, including the right to use property. *Id.* at 757. The Court did not decide the issue, holding only that the trial court in that case did not abuse its discretion when it cancelled the lis pendens because the plaintiffs did not request a stay of the order dismissing the lis pendens. *Id.*

Therefore, by cancelling the lis pendens, the trial court clearly did not "alter the status quo" as the Guests argue.

Likewise, "the appeal and supersedeas operates as a stay of affirmative action upon the judgment, as a supersedeas of execution, but does not destroy the judgment in so far as it can operate without the aid of an execution." *State ex rel. Gibson v. Superior Court of Pierce Cty.*, 39 Wash. 115, 117, 80 P. 1108, 1109 (1905)(holding that only mandatory injunctions can be superseded, preventative injunctions cannot); *State ex rel. W. G. Platts, Inc. v. Superior Court for Thurston Cty.*, 55 Wash. 2d 714, 715-16, 349 P.2d 1087, 1088 (1960)("A self-executing order is not normally superseded . . . by the filing of a supersedeas bond"), citing *State ex rel. Sprague v. Superior Court*, 32 Wash. 693, 73 P. 779 (1903). Here, since that portion of the Judgment that quiets title in the Langes' deck in their favor is self-executing and, therefore, is not affected by the supersedeas bond, in turn, there is no basis for arguing that the supersedeas bond affects the lis pendens.

Notably, too, the Guests failed to provide citation to any legal authority to support their argument that the supersedeas bond somehow operated to freeze the lis pendens or strip the trial court of its authority to cancel the lis pendens; as a result, the argument should be rejected outright. *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d

784 (1991)(argument raised on appeal should not be considered in the absence of citation to legal authority to support it).

Finally, the Guests' interest in notifying potential buyers of their dispute with the Langes is protected because if the Langes seek to sell their property during the pendency of this appeal, they arguably would have a duty to a potential buyer to disclose the fact of the pending appeal. *McRae v. Bolstad*, 32 Wn. App. 173, 176–77, 646 P.2d 771 (1982)(seller of property has a duty to disclose to the buyer all material facts not reasonably ascertainable), *affirmed*, 101 Wn.2d 161, 676 P.2d 496 (1984); RCW 64.06.020 (imposing a statutory duty on a seller of real property to disclose the material facts about the property for sale). A potential buyer would thus be on notice of the Guests' dispute. Washington law simply does not support the Guests' request that this Court vacate the trial court's order cancelling the lis pendens and remand to reinstate the lis pendens. The trial court's order should be affirmed.

If, however, the Court vacates the trial court order cancelling the lis pendens, the Langes request that Court direct the trial court to set the amount of supersedeas bond at $215,000 to protect the Langes from damages caused by the lis pendens or alternatively, direct the trial court to evaluate the damages that could potentially result to the Langes from

reinstatement of the lis pendens and set the amount of the supersedeas bond the Guests will be required to post accordingly.

B. The Court Should Reject The Guests' Request For Remand To Conduct Invasive Discovery Into The Langes' Personal Finances Because The Issue Is Not Ripe For Review And No Authority Authorizes The Requested Post Trial Discovery.

While their brief is not entirely clear, it appears the Guests are asking the Court, in the event the Court vacates the trial court order cancelling the lis pendens, to remand to the trial court with instructions to allow the Guests to conduct the discovery they sought below, before the trial court sets the amount of supersedeas bond. For the reasons set forth below, their request should be denied.

1. The Issue Is Not Ripe For Review.

First, the Guests' request for an order allowing invasive discovery is not ripe for review because the trial court never ruled on their discovery motion. The discovery motion was rendered moot when the lis pendens was cancelled and the supersedeas bond was set at $4000.00. As a result, the trial court never actually ruled on the Guests' motion and there simply is no order or decision before the court on this appeal. Should this Court vacate the lis pendens, it will be up to the trial court to decide what, if any, discovery may be proper to set the amount of the supersedeas bond.

2. Neither RAP 7.2 Nor Civil Rule 27(b) Authorize The Court To Order The Invasive And Extensive Discovery The Guests' Seek.

Even if the issue was ripe for review, the Guests have failed to provide citation to applicable legal authority to authorize the invasive discovery they seek, specifically, to subpoena the Langes' personal financial records, records from Umpqua Bank, and records from "any other entity learned to be involved in the alleged refinance attempt," and to take "perpetuation depositions" of the Langes, the title officer, and/or the loan officer.[55]

There is no court rule or case law that authorizes post-judgment depositions of the prevailing party, the prevailing party's personal financial banker, or the prevailing party's title insurance officer pending an appeal. Nor is there any legal authority authorizing a court to order that the prevailing party's personal and financial records be turned over to the losing plaintiff. Neither RAP 7.2 nor Civil Rule 27, relied upon by the Guests, provide authority for the discovery they seek.

RAP 7.2 provides in pertinent part:

> (a) Generally. After review is accepted by the appellate court, **the trial court has authority to act in a case only to the extent provided in this rule**, unless the appellate court limits or expands that authority as provided in rule 8.3. . . .

[55] CP 93-104.

> (h) Supersedeas, Stay, and Bond. The trial court has authority to act on matters of supersedeas, stays, and bonds as provided in rules 8.1 and 8.4, CR 62(a), (b), and (h), and RCW 6.17.040. . . .
>
> (k) Perpetuation of Testimony. The trial court has authority to supervise discovery proceedings pursuant to CR 27.

Id. (emphasis supplied).

As stated in RAP 7.2(h), the trial court's authority to act on matters of supersedeas, stays and bonds is specifically limited to that outlined in RAP 8.1, 8.4, CR 62(a), (b), and (h), and RCW 6.17.040. There is no language in those rules or in that statute, that can be interpreted to remotely authorize the trial court to order invasive discovery in connection with a supersedeas or bond, and the Guests make no argument in reliance on RAP 7.2(h).

And, while RAP 7.2(k) provides the trial court with authority to supervise discovery proceedings pursuant to Civil Rule 27, nothing in Civil Rule 27 authorizes the Court to order the type of discovery the Guests seek or for the reason the Guests proffer. Specifically, Civil Rule 27(a) applies only to the taking of testimony before an action is filed, and therefore does not apply here. Civil Rule 27(b) applies to the taking of testimony while a matter is on appeal, and provides that a court may allow a party to depose a witness to perpetuate their testimony "for use in the event of further proceedings in the superior court," provided the moving party can establish

that "the perpetuation of the testimony is proper to avoid a failure or delay of justice." *Id.* However, the scope of discovery under CR 27(b) is significantly narrower than that available under the general discovery provisions of Civil Rule 26.[56]

While research has not revealed any Washington appellate cases addressing CR 27(b), numerous federal courts have addressed the application of FRCP 27(b) which is, for all intents and purposes, nearly identical to CR 27(b). "Rule 27(b) does not create a general right to take discovery pending appeal." *Ferri v. Berkowitz*, 293 F.R.D. 144, 146 (E.D.N.Y. 2013). Rule 27 "is not a substitute for discovery." *Ash v. Cort*, 512 F.2d 909, 912 (3rd Cir. 1975). Instead, "the Rule allows for a party to move to take depositions in order to perpetuate testimony for use in the event of post-appellate proceedings before the trial court," only if the moving party can also show that the testimony will be lost unless taken immediately, and such loss of testimony will result in "a failure of justice." *Id.* at 145 (emphasis added); *Ash*, 512 F.2d at 911-912 (the Rule is available in special circumstances to preserve testimony which would otherwise be lost unless taken immediately).

> [Rule 27 applies] to situations where, for one reason or another, testimony might be lost . . . unless taken

[56] CR 26(b)(1) specifically states that "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ."

> immediately. . . Such testimony would thereby be perpetuated or kept in existence and, if necessary, would be available for use at some subsequent time. *Petition of Ferbauf*, 3 F.R.D. 89, 91 (S.D.N.Y. 1943). Rule 27 properly applies only in that special category of cases where it is necessary to prevent testimony from being lost.

Ash, 512 F.2d at 911. *See also,* 3A Wash. Prac., Rules Practice CR 27 (6th ed.)(explaining that the moving party must establish that there is a significant likelihood that the person sought to be deposed will be unavailable for trial, citing *Mutual Life Ins. Co. v. U.S.*, 68 F.3d 1371 (D.C. 1995).[57]

Civil Rule 27(b) simply does not apply to the type of invasive discovery the Guests seek, or for the reason the Guests' proffer for that discovery. The Guests do not seek perpetuation depositions of the Langes, their personal banker, or the title insurance company's officer to preserve their testimony for use in the event of post-appellate proceedings before the trial court. Nor have the Guests' established that the testimony they seek will be lost if not taken immediately, resulting in a failure of justice. Instead, the only reason the Guests proffer for taking the numerous perpetuation depositions is they are "entitled to investigate" the Langes' claim of damages. The Guests wholly failed to satisfy the strict

---

[57] *Accord, In re Hopson Marine Transp., Inc.*, 168 F.R.D. 560, 564 (E.D. La. 1996); *State of Nevada v. O'Leary*, 151 F.R.D. 655, 657 (D. Nev. 1993), *affirmed*, 63 F.3d 932 (9th Cir.1995); *Echevarria-Soto v. Edwards Lifesciences Tech. Sarl, LLC.*, 303 F.R.D. 175 (D.P.R. 2014).

requirements for obtaining the limited perpetuation depositions authorized under CR 27(b).

Furthermore, the Guests have absolutely no legal right to use the Court's powers to force the Langes or any financial institutions to turn over the Langes' private financial records to the Guests or to be deposed with respect to the Langes' finances. The Langes are not the Guests' debtors; they owe the Guests nothing. The Guests have failed to cite to any legal authority to substantiate their request to conduct the invasive discovery they seek, and therefore, there is no debatable point of law. In short, there is no legal basis to grant the relief the Guests' seek on appeal.

C. The Guests Have Failed To Establish That Any Alleged Error By The Trial Court In Not Ruling On The Guests' Motion to Strike Was Prejudicial.

Determining whether testimony is admissible rests within the sound discretion of the trial court. *Brewer v. Copeland*, 86 Wn.2d 58, 542 P.2d 445 (1975). Likewise, a trial court's ruling on a motion to strike testimony is reviewed for abuse of discretion. *Engstrom v. Goodman*, 166 Wn. App. 905, 910, 271 P.3d 959 (2012). A trial court abuses its discretion only when its exercise of discretion "is manifestly unreasonable or based upon untenable grounds or reasons." *Davis v. Globe Mach. Mfg. Co.*, 102 Wn.2d 68, 77, 684 P.2d 692 (1984).

Even if a trial court abuses its discretion with regard to the admission or exclusion of evidence, the party seeking review must establish that the error was prejudicial. An error is prejudicial if, "within reasonable probabilities, had the error not occurred, the outcome . . . would have been materially affected." *State v. Smith*, 106 Wn.2d 772, 780, 725 P.2d 951 (1986).

On the other hand, the improper admission of evidence constitutes harmless error when the evidence is of minor significance in reference to the evidence as a whole. *Thieu Lenh Nghiem v. State*, 73 Wn. App. 405, 413, 869 P.2d 1086 (1994). Likewise, when evidence is erroneously admitted, there is no resulting prejudice and the error is harmless when the same facts are established by other evidence. *Feldmiller v. Olson*, 75 Wn. 2d 322, 325, 450 P.2d 816, 818 (1969), citing *Bond v. Wiegardt*, 36 Wn.2d 41, 55, 216 P.2d 196 (1950); *Lantham v. Hennessey*, 13 Wn. App. 518, 526, 535 P.2d 838 (1975)(holding that any error by the trial court in admitting improper testimony was harmless because similar testimony had properly been admitted).

Here, while the Guests argue that the trial court erred in not ruling on their motion to strike Mr. Lange's testimony that Umpqua Bank would not provide the Langes with their approved refinancing unless the lis pendens was released, the Guests failed to establish that alleged error was

prejudicial. In fact, any alleged error by the trial court in failing to rule on the motion to strike was harmless because the Langes submitted testimony from the Umpqua loan officer who testified that while the Langes' refinance had been approved, the loan could not be secured until the lis pendens was cancelled.[58] The Guests did not object to the admission of the loan officer's testimony. Accordingly, the Guests have failed to show any alleged error in failing to rule on their motion to strike was prejudicial. There is no basis for remand on this issue.

D. The Guests Are Not Entitled To Attorney Fees.

Without citation to any legal authority, the Guests seek an award of attorney fees, costs and expenses below, on appeal, and for any further proceedings. Washington courts follow the American rule – each party in a civil action is obligated to pay its own attorney fees and costs, unless an obligation to pay the others' attorney fees and costs is clearly set forth in a contract, statute or a recognized ground in equity. *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc*, 159 Wn.2d 292, 296-97, 149 P.3d 666, 669 (2006).

The Guests rely solely on an indemnity provision in the Patio or Deck Easement in the Spinnaker Association's CC&Rs to argue they are

[58] CP 74-75; CP 122-124; CP 126-139.

entitled to attorney fees. According to the Guests, the indemnity provision obligates the Langes to defend the Guests in this lawsuit, including apparently, the Guests' appeal of cancellation of the lis pendens, after the Guests lost the jury trial in this case.[59] Their argument is not supported by Washington law and was easily rejected by the trial court below,[60] although it is an issue pending in the first appeal filed by the Guests in this court (Court of Appeals No. 46802-6-II).

The indemnity provision the Guests rely on provides as follows:

> Grantee promises, covenants, and agrees that the Grantor shall not be liable for any injuries incurred by the Grantee, the Grantee's guests and/or third parties arising from the utilization of said easement and further Grantee agrees to hold Grantor harmless and defend and fully indemnify Grantor against any and all claims, actions, and suits arising from the utilization of said easement and to satisfy and [sic] all judgments that may result from said claims, actions and/or suits.[61]

To interpret this indemnity provision as requiring the Langes to pay the Guests' attorney's fees incurred on this appeal is an absurd result and contrary to the plain language of the indemnity provision.

"Indemnity agreements are subject to the fundamental rules of contract construction, *i.e.*, the intent of the parties[']s controls; this intent

---

[59] CP 269-273.
[60] CP 552.
[61] CP 461.

must be inferred from the contract as a whole; the meaning afforded the provision and the whole contract must be reasonable and consistent with the purpose of the overall undertaking §16.4" *Knipschield v. C-J Recreation, Inc.*, 74 Wn. App. 212, 215, 872 P.2d 1102, 1104 (1994). The provision must be read as the average person would read it; it should be given a "practical and reasonable rather than a literal interpretation," and not a "strained or forced construction" leading to absurd results. *Eurick v. Pemco Ins. Co.*, 108 Wn. 2d 338, 341, 738 P.2d 251, 252 (1987), quoting *E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co.*, 106 Wn.2d 901, 907, 726 P.2d 439, 443 (1986).

Based on the plain language of the indemnity provision, the provision is only triggered if the Guests are sued by third parties for injuries sustained when using the Langes' deck within the area of the Easement. That clearly is not the case here - no third party injuries precipitated the Guests' lawsuit against the Langes. There is, therefore, no legal basis upon which to award attorney fees or costs to the Guests, on appeal or for any proceedings below.

The Washington Supreme Court decision in *City of Tacoma v. City of Bonney Lake*, 173 Wn.2d 584, 593, 269 P.3d 1017, 1022 (2012) (granting direct review from the trial court) is directly on point. In *City of Tacoma*, Tacoma sued the defendant municipalities under a franchise agreement

between the parties that included an indemnity provision. One of the issues before the Court was whether the indemnity provision required Tacoma (indemnitor) to indemnify the Municipalities (indemnitees) with respect to the lawsuit Tacoma filed against the Municipalities, as well as defend the City of Federal Way in the lawsuit. *Id.* at 593. The pertinent provision in the indemnity clause provided:

> [Tacoma] hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City . . . from any and all claims, costs, judgments, awards or liability to any person."

Id. The Municipalities argued that the indemnity provision precluded Tacoma from filing any action under the contract because any enforcement action to compel performance would be a "claim" arising under the contract subject to the indemnity provision. *Id.* The Supreme Court expressly rejected this argument, holding:

> While this language [in the indemnity provision] is undeniably broad, it does not prevent Tacoma, a party to the contract, from suing the Municipalities, another party to the contract. Concluding otherwise *would produce the absurd result of precluding a party to a contract from disputing its obligations under that contract.*"

Id. (emphasis added)

The City of Federal Way also argued that the indemnity provision required Tacoma to defend it in the lawsuit. The Court rejected that argument as well, holding that to interpret the indemnity provision so as to

force Tacoma to bear all costs of litigation when there was any dispute over contractual performance between parties, likewise "produces an absurd result." *Id.* at 594.[62]

This is exactly the same argument and interpretation of the indemnity provision the Guests ask this Court to make in this case; the Guests' interpretation is unreasonable and produces an absurd result, and was properly rejected by the trial court. The Guests' request for attorney fees should be denied.

V. CONCLUSION

If this Court affirms the summary judgment order and the judgment entered in favor of the Langes in the first appeal (Court of Appeals No. 46802-6), the issues raised in this second appeal, all of which address post-trial motions connected with the pendency of the issues in that first appeal (Court of Appeals No. 46802-6), will be rendered moot and the court should simply re-affirm the trial court's post judgment orders. If the Court does have occasion to address this second appeal on its merits, based on the foregoing, the Langes respectfully request the Court affirm the trial court's

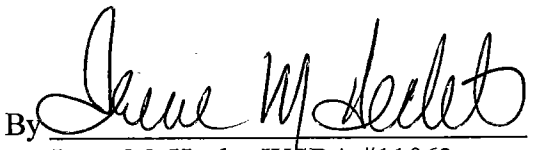
---

[62] *See also*, *Taylor v. Browning*, 129 Idaho 483, 493, 927 P.2d 873, 883 (1996) (holding that indemnity clause did not bar indemnitor's claim against indemnitee because there was no liability to a third party, and it would be unreasonable to interpret it as such as it would allow the indemnitee to breach the contract and then declare himself harmless); *ProtecoTech, Inc. v Unicity Int'l, Inc.*, 547 F. Supp. 2d 1174, 1180 (W.D. Wash. 2008) (finding that the plaintiff's argument would "transform the indemnification clause into a blank check to sue and collect attorney fees" and rejecting such an unreasonable interpretation.)

Order Cancelling the Lis Pendens, and reject the Guests' requests for this Court to remand with instructions to the trial court to allow the Guests to conduct invasive discovery and strike portions of Mr. Langes' declaration. They also request the Court reject the Guests' request for attorney fees.

RESPECTFULLY SUBMITTED this 14 day of December, 2015.

KELLER ROHRBACK L.L.P.

By 

Irene M. Hecht, WSBA #11063
Maureen M. Falecki, WSBA #18569
Attorneys for Respondents

CERTIFICATE OF SERVICE

I, Keeley Engle, declare under penalty of perjury under the laws of the State of Washington that at all times hereinafter mentioned, I am a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date below, I caused a copy of the foregoing document to be served on the individuals identified below via Email and First Class U.S. mail, postage prepaid:

Christopher and Suzanne Guest
6833 Main Sail Lane
Gig Harbor, WA 98335
Email: emma1g@aol.com

Mr. Timothy J. Farley
Farley & Dimmock LLC
2012 34th Street
Everett, WA 98201-5014
Counsel for Respondents
Email: tjfarley@farleydimmock.com

Ms. Betsy A. Gillaspy
Mr. Patrick McKenna
Gillaspy & Rhode PLLC
821 Kirkland Avenue, Suite 200
Kirkland, WA 98033-6318
Email: bgillaspy@salmigillaspy.com
pmckenna@salmigillaspy.com

SIGNED this 14th day of December, 2015, at Seattle, Washington.

Keeley Engle, Legal Assistant

KELLER ROHRBACK LLP

December 14, 2015 - 3:37 PM

Transmittal Letter

Document Uploaded: 5-474824-Respondents' Brief.pdf

Case Name: Guest v. Lange
Court of Appeals Case Number: 47482-4

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: Respondents'

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Keeley C Engle - Email: kengle@kellerrohrback.com

A copy of this document has been emailed to the following addresses:

kengle@kellerrohrback.com