No. 97468-3

SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTOPHER GUEST AND SUZANNE GUEST, husband and wife,

Appellant,

v.

DAVID LANGE AND KAREN LANGE, husband and wife, and the marital community comprised thereof,

Respondents.

THE COE FAMILY TRUST and Trustee Michael Coe,
Interveners/Respondents,

v.

CHRISTOPHER GUEST AND SUZANNE GUEST,
Respondents/Appellants.

RESPONDENTS' ANSWER TO AMENDED PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

Respondents are David Lange and Karen Lange ("the Langes").

II. COURT OF APPEALS DECISION

The unpublished Court of Appeals decision was filed on May 7, 2019. Guests' motion for reconsideration was denied by order on June 19, 2019.

III. STATEMENT OF THE CASE

A. Procedural History

1. Underlying Litigation, Prior Appeals, and Issuance of Mandates

This litigation arose from a dispute between neighbors over the Langes' deck built within the Spinnaker Ridge Development in Gig Harbor. The Langes rebuilt their aging deck in the same footprint it had always been located, including within an easement over the Guests' property, an easement granted to the Langes in a properly recorded "Patio or Deck Easement" and an encroachment easement in the Spinnaker Ridge declaration of covenants, conditions, restrictions and reservations ("CC&Rs"). *See Guest v. Lange*, No. 46802-6-II, 194 Wn. App.1031, 2016 WL 3264419, at *1 (June 14, 2016) ("*Guest I*"). The Guests sued the Langes in 2011 for breach of contract, trespass, and breach of the covenant of fair good faith and fair dealing. The Guests also alleged the Langes were obligated to indemnify the Guests. The Langes asserted affirmative

defenses, a trespass counterclaim and asked the court to quiet title in the deck with the Langes. *Id.* at *2; *Guest v. Lange,* No. 50138-4-II, 8 Wn. App. 2d 1062, 2019 WL 2004235, at *2 (May 7, 2019) ("Guest III").

Both parties filed motions for partial summary judgment. The trial court granted the Langes' motion, orally ruling that the Langes had the right to rebuild their deck, including within the area provided by the Patio or Deck Easement. *Guest I*, 2016 WL 3264419, at *3 n.4. As a result of the trial court's rulings on summary judgment, the claims that remained for trial included the Guests' claims for trespass related to a three-foot by five-foot encroachment and for breach of contract, and the Langes' claim for quiet title. *Guest I*, 2016 WL 3264419, at *3; *Guest III*, 2019 WL 2004235, at *2.

A jury trial ensued with the jury returning a defense verdict finding that the Langes' deck did not trespass on the Guests' property, and that the Langes did not breach a contract with the Guests. Based on the verdict, the court entered final judgment dismissing the Guests' claims and quieting title in the Langes to "exclusively use, maintain, repair and replace the deck serving their property as it now exists against any claim of the plaintiffs." CP 3359.

The Guests filed a notice of appeal challenging fifteen of the trial court's orders, several oral rulings from the trial court, various jury

instructions, and the judgment entered in the Langes' favor. In an unpublished opinion, the Court of Appeals affirmed the trial court's rulings and the judgment. *Guest* I, 2016 WL 3264419, at *10. With respect to the Patio or Deck Easement ruling, the Guests argued that the trial court erred by granting summary judgement on the validity of the Easement because the trial court did not consider new evidence the Guests attempted to present in untimely filed CR 56(f) declarations; the Guests did not argue that the trial court improperly granted summary judgment based on the information before the court at the time it rendered its ruling. *Guest I*, 2016 WL 3264419, at *5 n.6, *7, & *9-10.

The Guests filed a motion for reconsideration which was denied, and this Court denied the Guests' petition for discretionary review. CP 84; 86. The mandate was issued on January 9, 2017. CP 3904-05.

The Guests' second appeal in this matter, filed on April 20, 2015, was from the trial court's March 27, 2015 order cancelling two of the Guests' notices of lis pendens recorded against the Langes' property, one in January 2013 and another in March 2015. This appeal was assigned cause number 47482-4-II (*Guest II*). The Court of Appeals reversed the cancelling of the two lis pendens, holding that the trial court erred by cancelling the lis pendens at that time because the Guests' appeal in *Guest I* and their posting of a supersedeas bond meant that the action was not

"settled, discontinued, or abated" as required by RCW 4.28.320 to cancel the lis pendens. *Guest v. Lange*, 195 Wn. App. 330, 337, 381 P.3d 130 (2016) ("*Guest II*"). The Guests filed a motion for reconsideration which the Court of Appeals denied, and this Court denied their petition for review. CP 105, 107. The Court of Appeals issued its mandate in *Guest II* on February 13, 2017. CP 413-414.

2. After The Two Final Mandates Were Issued, The Langes Moved To Cancel the Numerous Lis Pendens The Guests Had Filed Against The Langes' Property.

Shortly after the two mandates were issued, fully and finally resolving all issues in this litigation, and consistent with them and the lis pendens statute, RCW 4.28.320, the Langes moved to cancel all eight (8) lis pendens filings that the Guests had recorded with the Pierce County Auditor that cloud the Langes' title to their Spinnaker Ridge property. CP 1-16; CP 17-225. The trial court granted the Langes' motion to cancel the lis pendens by Order dated February 14, 2017, after finding that the matter had been fully and finally resolved. CP 395-398.

Thereafter, the Guests filed a motion for reconsideration in the trial court which was denied by Order entered March 28, 2017. CP 3908. Two days later, they filed a Notice of Appeal from the February 24, 2017 Order cancelling the lis pendens. CP 415-422. The Guests then filed four more

motions and various pleadings in the trial court. CP 3903-3914; 3967-3986; 3992-4007; 4008-4019. The motions were denied. CP 4028-4031. The trial court did, however, allow one lis pendens to remain in place, recorded under Pierce County Auditor No. 201301231320, because the Guests had appealed from the Order cancelling the lis pendens. CP 4029. The trial court ordered that all other lis pendens would remain cancelled because all the issues in the matter had been resolved to finality pursuant to the two mandates. CP 4029 - 4031. The Guests filed a motion for reconsideration of that order as well. CP 4040-4065. It was denied. CP 4058.

The Guests filed three notices of appeal - from the Order cancelling the lis pendens and from all the trial court's subsequent orders denying the Guests' numerous motions. CP 415-422; 4032-4037; 4059-4068. All three notices were consolidated into one appeal. *Guest III*, 2019 WL 2004235, at *5.

B. The Court of Appeals' Opinion

In their opening brief before the Court of Appeals, in addition to raising arguments with respect to the trial court orders cancelling the lis pendens, and the trial court's orders on the Guests' subsequent miscellaneous motions, the Guests also sought to challenge the Court of Appeals' decisions from *Guest I* and *Guest II,* despite the two mandates having been issued.

First, the Guests argued that the trial court erred when it cancelled the lis pendens claiming that the action was not final, settled, discontinued or abated. *Guest III*, 2019 WL 2004235, at *7. The Guests asserted six various arguments that the underlying action was not final and hence the cancelling of the lis pendens was improper. *Id.* at *8-10. The Court of Appeals properly rejected their arguments, holding that under the clear language in RCW 4.28.320,[1] which governs when a trial court may cancel a notice of lis pendens, the underlying litigation was indeed final. *Id.* at *7-8. The Court of Appeals affirmed the cancellation of the lis pendens and remanded "with directions to the trial court to cancel the remaining lis pendens, auditor no. 201301231320, when this case mandates." *Id.* at *12.

Second, the Guests argued that all orders and decisions in this case were void because the trial court and the Court of Appeals lacked subject matter jurisdiction to consider the matter, arguing that the courts somehow improperly "altered" or "amended" the Spinnaker Ridge final plat when ruling that the Patio Easement was valid and enforceable. *Id.* at *6-7. The Guests argued that only the Gig Harbor legislature had the authority to

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[1] RCW 4.28.320 sets forth in pertinent part:

> ... And 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 the notice authorized in this section be cancelled of record...

Id.

amend or alter a final plat under Chapter 58.17 RCW and that to alter a final plat, the Langes had to comply with Chapter 36.70 RCW. *Id.* The Court of Appeals rejected the argument explaining that under *Hanna v. Margitan,* 193 Wn. App. 596, 608, 373 P.3d 300 (2016):

> [C]onveyance of an easement does not require an amendment of a short plat unless such conveyance is prohibited by the notes on the short plat or there is a risk that the easement created an illegal use within the short plat.

Guest III, 2019 WL 2004235, at *7, citing *Hanna*, 193 Wn. App. at 608. The Court of Appeals noted that the Guests had not even asserted that the Patio or Deck Easement was prohibited by notes on the plat or that it created an illegal use within the plat. *Id.* Therefore, the Guests had not shown that any action taken by the court altered or amended the final plat and in turn, they failed to show that the trial court or the Court of Appeals lacked "jurisdiction." *Id.*

The Court of Appeals went on to further explain that cases that involve the title or possession of real property including actions to quiet title, are indisputably within the superior courts' subject matter jurisdiction. *Id.* quoting Wash. Constitution, Article IV, § 6 and *In re Dependency of L.S.*, 200 Wn. App. 680, 687, 402 P.3d 937 (2017), *rev. denied*, 190 Wn.2d 1006 (2018).

The Guests also sought to appeal from the May 6, 2013 summary judgment, despite the fact they failed to appeal from that order in *Guest I. Guest III*, 2019 WL 2004235, at *10. They also sought review again of the Court of Appeals' prior decisions in *Guest I* and *Guest II* despite the issuance of the two mandates. *Id.* at *9-10. The Court of Appeals properly rejected these requests. *Id.* at *10. Thereafter, the Guests filed a motion for reconsideration which the Court of Appeals denied. The Guests' Amended petition for review followed.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

From the outset, it must be noted that the "issues" raised by the Guests in their amended petition for review do not address the central issue in this appeal—whether the trial court properly cancelled the numerous lis pendens the Guests filed against the Langes' property after the final Mandates were issued in this case. Rather, the Guests seek to improperly re-visit the final Judgment entered in the Langes' favor, to "exclusively use, maintain, repair and replace the deck as it now exists against any claim of the plaintiffs." The Guests do not even raise as an issue the cancellation of the numerous lis pendens. In fact, nowhere in the Guests' amended petition do the words "lis pendens" even appear. The amended petition simply provides no basis or reasoned argument to support this Court accepting discretionary review of the Court of Appeals decision affirming

cancellation of the lis pendens. The amended petition for review should be denied.

A. Review Should Be Denied Because The Guests Failed To Establish Any Of The Four Grounds Necessary To Merit Supreme Court Review.

RAP 13.4 sets forth the four grounds under which the Supreme Court will accept discretionary review. Under RAP 13.4 (b),

> [a] petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4.(b).

The only grounds upon which the Guests' appear to rely to obtain this Court's review are RAP 13.4 (b)(1) and (2). After weaving through countless factual assertions without proper citations to the record, asserting convoluted arguments, irregularities and no reasoned analysis or citation to legal authority, the Guests' amended petition finally states at page sixteen, that this Court should accept review of all issues because the Court of

Appeals' decision "is in conflict" with *Maytown Sand and Gravel, L.L.C. v. Thurston County*, 191 Wn.2d 392, 423 P.3d 223, *as amended* (Oct. 1, 2018), and *Johnson v. Lake Cushman Maintenance Co.,* 5 Wn. App. 2d 765, 425 P.3d 560 (2018).

In *Maytown*, this Court recognized that "[a] party challenging a local land use decision must exhaust local administrative processes before seeking review in the courts." *Maytown*, 191 Wn. 2d at 425, citing RCW 36.70C.030. The issue before the court in *Johnson* was whether an easement was intended to be an exclusive easement. *Johnson,* 5 Wn. App. 2d at 769. Neither decision has anything to do with the cancellation of lis pendens. The Guests' amended petition fails to argue, much less establish, that the Court of Appeals' decision below conflicts with either *Maytown* or *Johnson*. The Guests do not attempt to explain how or why the Court of Appeals' decision conflicts with either *Maytown* or *Johnson*. Moreover, the Guests' arguments supporting their amended petition do not address, discuss, or even refer to the *Maytown* or *Johnson* decisions. As these are the only grounds under RAP 13.4 the Guests argue support Supreme Court review, the Guests' amended petition does not merit this Court's review of the Court of Appeals' decision.

In short, the Guests' have failed to establish any basis under RAP 13.4 (b) for the Court to accept discretionary review of the Court of Appeals

decision affirming the cancellation of the lis pendens after the issuance of the final mandates in this case. The amended petition for review should be denied.

B. Review Should Be Denied Because The Amended Petition Raises Issues That Relate Solely To The Merits Of The Long Final Underlying Case.

As best as can be deciphered from the Guests' winding, disjointed, and convoluted arguments, they appear to be arguing, *for the first time* in their amended petition for review, that because the Langes did not administratively file a petition (appeal) from what they call a "final permit" allegedly issued by the City of Gig Harbor and allegedly "stipulated" to by the Langes, the Langes could not assert the validity of the Patio or Deck Easement in the trial court, and hence the courts below had no jurisdiction to rule that the Patio or Deck Easement was valid and enforceable. (Petitioners' Issues For Review Nos. 3, 4, 5). Notably, the Guests do not argue as they did below, that the trial court and Court of Appeals improperly altered or amended the Spinnaker Ridge final plat.

The Guests also appear to argue that the City of Gig Harbor was the actual owner and developer of the Spinnaker Ridge Development (Issue for Review No. 6); the City intended to retain control of the Spinnaker Ridge CC&Rs (Issue for Review No. 6); the City did not intend that Spinnaker Ridge have a Patio or Deck Easement as it existed in the CC&Rs (Issue for

Review No. 7); the City did not intend any deck easements granted to be exclusive (Issue for Review No. 7); and the City intended that grantees of deck easements would be required to fully indemnify the grantors of such an easement. (Issue for Review No. 8).

1. All the "Issues" Raised By the Guests Relate Solely to the Merits Of the Already Final Underlying Decision

Fatal to review of all of the purported "issues" raised by the Guests in their amended petition is the fact that they all relate directly to the merits of the underlying case - specifically, the validity of the Patio or Deck Easement. But the merits of underlying case have long been resolved. Final judgment in the underlying case was entered on September 19, 2014, that judgment was affirmed in 2016 in *Guest I,* 2016 WL 3264419, at *1 & *4-10, the Guests' motion for reconsideration was denied, this Court denied review, and a mandate was issued on January 9, 2017, over two and a half years ago.

Notably, too, in their first appeal which addressed the merits of their claims against the Langes, the Guests did not appeal from the trial court's May 6, 2013 order on summary judgment finding that the Patio or Deck Easement was valid and enforceable. *See Guest I*, 2016 WL 3264419, at *5 n.6,*5-7 & *9-10. As a result, the Guests long ago waived their right to contest the validity of the Patio or Deck Easement. *See*, *Guest III*, 2019 WL

2004235, at *10, citing *Guest I*, 2016 WL 3264419, at *1 n.1. Hence, the Guests' issues relating to the validity of the Patio or Deck Easement are not properly before this Court, and there is simply no legal basis to consider them on discretionary review.

2. The Guests Improperly Rely Solely on Evidence That Is Not Part of the Record and Fail to Include Proper Citations to the Record and Legal Authority

All of the "issues" raised by the Guests in their amended petition for review are premised on "evidence" they purportedly obtained *after* they filed this most recent appeal.[2] The documents are not a part of the trial court record but are improperly included in the Guests' amended appendix. Nor do the Guests rely on RAP 9.11(a) in an effort to have the "evidence" considered, and they fail to address any of the six criteria of RAP 9.11(a) required for new evidence to be considered. As the Court of Appeals below noted, the Guests' failure to satisfy all six criteria of RAP 9.11(a) bars consideration of the evidence on appeal. *Guest III* at fn.16, *citing Harbison v. Garden Valley Outfitters, Inc.*, 69 Wn. App. 590, 593-94, 849 P.2d 669 (1993)(Court of Appeals will not accept additional evidence on appeal unless all six criteria of RAP 9.11(a) are satisfied.) In short, the "evidence"

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[2] *See,* Amended Petition at p.5. As the Guests state: "Given the City public records produced to the Guests after this appeal was filed (as above and in the attached Appendix) that evidence . . ."

the Guests' rely on for their new "issues" is not properly before this Court and should not be considered.

Likewise, the Guests' "issues" do not warrant review because to the extent that the Guests purport to rely on evidence in the record for their numerous factual assertions, they fail to property cite to the record. Under Washington law, when factual assertions are not supported by proper reference to the record, the statements do not warrant consideration and they should be stricken or otherwise wholly disregarded. *Brummett v. Wash.'s Lottery*, 171 Wn. App. 664, 681, 288 P.3d 48 (2012); *Hirata v. Evergreen State Ltd. P'ship No. 5*, 124 Wn. App. 631, 637 n.4, 103 P.3d 812 (2004); *Northlake Marine Works, Inc. v. City of Seattle,* 70 Wn. App. 491, 513, 857 P.2d 283 (1993); *see also*, RAP 10.3(a)(5) (requiring that factual statements be supported by proper references to the record). Wholly absent from the Guests' amended petition is proper citation to the record for their factual assertions regarding the City of Gig Harbor's alleged "final permit" that the Langes allegedly "stipulated" to, the City's alleged ownership of the Spinnaker Ridge Development, and the City's alleged intent with regard to the Development, the CC&Rs, the Patio and Deck Easement, and any alleged indemnity agreements.

The Guests also fail to provide any reasoned arguments or citation to legal authority to support their legal conclusions. Courts routinely reject

consideration of all issues where the appellant fails to provide relevant argument and citation to legal authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (issues and arguments not supported by citation to legal authority need not be considered); *Washington v. Boeing Co.*, 105 Wn. App. 1, 18, 19 P.3d 1041 (2000) (court declined to review issue where appellant provided no relevant argument or citation to legal authority for the claim). And, a court may assume there is no legal authority to support a proposition when a party fails to cite to any authority. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Here, the Guests' amended petition fails to include *any* legal analysis, argument or citation to legal authority to support their legal conclusions that the Gig Harbor council issued a "final use permit;" that the Langes were constrained both by the alleged "final use permit" and their alleged "stipulation" to rebuild their deck; and that the alleged "final use permit" triggered application of RCW 36.70C *et. seq.* and RCW 58.17 *et. seq.*, requiring the Langes to file an appeal with the City of Gig Harbor. In fact, despite arguing that this case is controlled by RCW 36.70C *et. seq* and RCW 58.17 *et. seq.*, nowhere within the Guests' amended petition do they even explain, much less discuss, either of those statutory schemes and how they control here. Having failed to provide the required legal analysis and citation to authority to support their purported legal conclusions, there is

simply no basis for this Court to grant discretionary review of the Guests' amended petition.

In conclusion, review should be denied because the "issues" the Guests' raise to purportedly justify Supreme Court review are really nothing more than an attempt to revisit the merits of the final Judgment entered in the Langes' favor. This is simply not allowed after the final Mandate has been issued. In addition, the factual assertions made by the Guests are not supported by the record or citations to the record. Finally, they provide no legal analysis or legal authority to support their request for discretionary review. The amended petition for review should be denied.

C. Review Should Be Denied Because The Issue Of Recusal Does Not Raise Questions Of Subject Matter Jurisdiction And Judge Culpepper Did Not Recuse Himself.

The Guests' next issue which they raise *for the first time in their amended petition*, that Judge Ronald Culpepper, who ruled on the parties' summary judgment motions, did not have "jurisdiction" to hear the matter because he had allegedly later recused himself in this case and/or in a related case, *Spinnaker Ridge Community Association v. Guest*, Superior Court Cause No. 14-2-08865-4, (Issues for Review Nos. 1 and 2), fails for a myriad of reasons and does not warrant Supreme Court review.

First, an issue of recusal does not affect subject matter jurisdiction and the Guests fail to provide citation to any legal authority that holds that

it does. Article IV, section 6 of the Washington State Constitution grants to superior courts "original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.'" *Outsource Servs. Mgmt., L.L.C v. Nooksack Bus. Corp.*, 181 Wn.2d 272, 276, 333 P.3d 380 (2014) (quoting Const. art. IV, § 6). "Washington courts lack subject matter jurisdiction only in compelling circumstances because they are courts of general jurisdiction." *Amy v. Kmart of Wash., L.L.C.*, 153 Wn. App. 846, 852 (2009). "[A] superior court indisputedly has subject matter jurisdiction in a quiet title action. *In re Dependency of L.S.*, 200 Wn. App. 680, 687, 402 P.3d 937 (2017), *rev. denied*, 190 Wn.2d 1006 (2018). Moreover, "[s]ubject matter jurisdiction is the authority to hear and determine the class of action to which a case belongs, not the authority to grant the relief requested, or the correctness of the decision." *Bour v. Johnson*, 80 Wn. App. 643, 647, 910 P.2d 548 (1996). If the *type of controversy* is within the superior court's subject matter jurisdiction, "then all other defects or errors go to something other than subject matter jurisdiction." *Marley v. Dept. of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994) (citation omitted), *superseded by statute on other grounds*.

Here, the type of controversy—a property claim and an issue of quiet title—is clearly within the trial court's subject matter jurisdiction and

therefore, under *Marley*, the issue of recusal goes to something other than subject matter jurisdiction. The issue of recusal involves the appearance of fairness doctrine. *Skagit Cty. v. Waldal*, 163 Wn. App. 284, 287, 261 P.3d 164 (2011). That doctrine "seeks to ensure public confidence by preventing a biased or potentially interested judge from ruling on a case." *Id.* Because the issue of recusal does not relate to subject matter jurisdiction, the issue cannot be raised in the Supreme Court for the first time, as the Guests attempt to do. RAP 2.5(a); *see also, Washburn v. Beatt Equip. Co.*, 120 Wn. 2d 246, 840 P.2d 860 (1992); *Cowiche Canyon,* 118 Wn.2d at 809; *Am. Legion Post No. 32 v. City of Walla Walla,* 116 Wn.2d 1, 7, 802 P.2d 784 (1991). There is simply no basis for the Supreme Court to review the issue of Judge Culpepper's alleged recusal.

In fact, and again fatal to the Guests' issue of recusal, is that Judge Culpepper *did not* recuse himself and the Guests have not provided proper citation to the record to establish that he did. As previously established, when allegations of fact are not supported by proper reference to the record, they are not be considered by the Court. *Northlake Marine Works, Inc.*, 70 Wn. App. at 513, citing *Lewis v. City of Mercer Island*, 63 Wn. App. 29, 32, 817 P.2d 408 (1991), *rev. denied,* 117 Wn.2d 1024 (1991). Here, rather than providing proper citation to the record, the Guests rely solely on Mr. Guests' inadmissible declaration submitted in the amended appendix in

which he insists that Ms. Guest told him that *she* had "recused" Judge Culpepper. *See* Amended Petition at p. 10-11 and the Guests citation and reliance on Exh. H to Petitioner's amended appendix. Aside from being inadmissible hearsay, there is no legal basis for a party to "recuse" a judge.[3] Ms. Guest's assertion as told by Mr. Guest in a declaration simply does not qualify as a proper citation to the record. It is abundantly clear that the Guests' claim that the courts below lacked subject matter jurisdiction because Judge Culpepper allegedly recused himself, fails as a matter of law. The amended petition for review should be denied.

D. The Guests Request for Attorney's Fees Must Be Denied.

The Guests' request for attorney fees in their amended petition for review should be rejected in full. 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).

Here, the Guests cite to no applicable contract, statute or recognized ground in equity to support their request for attorney fees. Instead, they

[3] While a party may move to disqualify a judge if certain conditions are met (RCW 4.12.050), that statute is not at issue here.

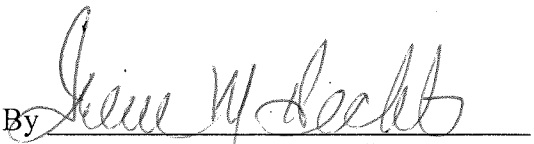
claim without citation to any legal authority, that they are entitled to an award of attorney fees, costs and expenses, and compensatory damages under RAP 8.1 "and otherwise." RAP 8.1 addresses supersedeas, not attorney fees. Further, to the extent the Guests seek fees under RAP 18.1 that assertion fails as well. The basis for the Guests' claim for attorney fees –for trespass, for Lange defense and indemnity under the "Lange indemnity agreement and compensation from their insurers"- have repeatedly been rejected by the courts below because there is simply no legal basis upon which to award the Guests fees. Indeed, the Guests were not the prevailing party below. The Guests' request for attorney fees should be denied.

V. CONCLUSION

The Langes respectfully request the Court deny the Guests' amended petition for discretionary review in its entirety. None of the grounds for review in RAP 13.4 are applicable in this case. There is simply no basis for the Court to review the unpublished decision of the Court of Appeals affirming the cancellation of the lis pendens and remanding it "with directions to the trial court to cancel the remaining lis pendens, auditor no. 201301231320, when this case mandates." Likewise, the Guests' request for attorneys fees should be denied because, as the courts below have repeatedly held, the Guests' were not the prevailing party and there is no legal basis for awarding them fees in this case.

RESPECTFULLY SUBMITTED this 6th day of September, 2019.

KELLER ROHRBACK L.L.P.

By 

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CERTIFICATE OF SERVICE

I, Krystal Lynn Brown, 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 electronically on the individuals identified below:

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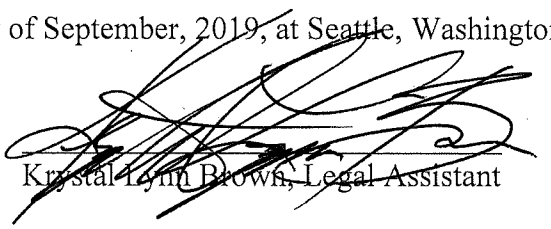
SIGNED this 6th day of September, 2019, at Seattle, Washington.



Krystal Lynn Brown, Legal Assistant

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KELLER ROHRBACK L.L.P.

September 06, 2019 - 11:30 AM

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