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STATE OF WASHINGTON
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No. 994650

SUPREME COURT
OF THE STATE OF WASHINGTON

TEN BRIDGES, LLC,

Petitioner,

v.

TERESIA GUANDAI and MIDAS MULLIGAN, LLC,

Respondents.

RESPONDENTS' ANSWER TO PETITIONER'S
PETITION FOR REVIEW

Court of Appeals Case No. 800841-I

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I. INTRODUCTION

The published Court of Appeals decision¹ holds that Ten Bridges, LLC's ("Ten Bridges") equity-skimming scheme violates RCW 63.29.350, and effectively prohibits such conduct in the future by Ten Bridges and others of its ilk, who prey on vulnerable consumers that have already lost their homes to foreclosure. The decision is correct, and Ten Bridges' Petition for Review ("Petition") fails to satisfy any of the bases for review under RAP 13.4(b). The decision does not conflict with any Supreme Court or Court of Appeals decisions, and it assures that persons who have lost their homes to foreclosure at least will be able to retain the equity they had built up prior to whatever cataclysmic event occurred in their lives that resulted in the foreclosure. While the case involves an issue of public interest, Ten Bridges fails to articulate why the Court of Appeals decision, which is binding law for all trial courts in the State,² is not sufficient without review by this court. Accordingly, the Court should deny Ten Bridges' Petition. RAP 13.4(b).

II. OVERVIEW OF FACTS³

Ms. Guandai owned a unit in a condominium development. CP 1-2, 43-44. She became delinquent on her condominium owners association assessments, and the association foreclosed on its lien for them. CP 1-6, 51-55.

¹ *Ten Bridges, LLC v. Guandai*, 15 Wn. App.2d 223, 474 P.3d 1060 (2020).

² *See American Discount Corp. v. Shepherd*, 129 Wn. App. 345, 355, 120 P.3d 96 (2005) ("Where the Supreme Court has not addressed an issue, an existing Court of Appeals decision is the law that must be followed on the issue.").

³ Ten Bridges' Petition includes no summary of relevant facts or references to the record, contrary to RAP 13.4(c)(6), justifying denial for that reason alone.

From the Sheriff's Sale of the condominium unit, there was more than \$89,000 in surplus proceeds (the "proceeds") that Ms. Guandai was entitled to receive. CP 139-140, 141-142, 196-197, 226; RCW 6.21.110(5)(a) ("Any remaining proceeds [from a judicial foreclosure] shall be paid to the judgment debtor"); RCW 61.12.150 (surplus proceeds following foreclosure sale after payment to foreclosing secured creditor "shall be paid" to the debtor, or his or her heirs or assigns). Within days of the Sale, Ten Bridges began telephoning Ms. Guandai, the first of many such calls, trying to acquire her right to receive the proceeds. CP 260, 271; RP 5/31/2019 at 11-12, 16-17. In these conversations, Ten Bridges' representative told Ms. Guandai that Ten Bridges would be willing to pay her \$10,000 to \$15,000 to acquire whatever interest she retained in the unit and her right to receive the proceeds. CP 271; RP 5/31/2019 at 16-17. Ten Bridges' representative told Ms. Guandai that there would be other creditors that would go to court and try to get some or all of the proceeds. CP 272. Ten Bridges' representative made it seem like it would be nearly impossible for Ms. Guandai to receive any of the proceeds without hiring "very good lawyers like the ones" Ten Bridges had, and even if she hired good lawyers she might not be successful. *Id.*⁴ Ten Bridges' representative also told Ms. Guandai that even with Ten Bridges' "very good lawyers," it

⁴ In fact, obtaining the remaining proceeds after a foreclosure sale by a debtor, after the foreclosing creditor has received payment, is a relatively simple matter. RCW 6.21.119(5)(b) authorizes one entitled to receive such proceeds to obtain an order directing the clerk of the superior court to disburse the proceeds to that person by (1) filing a motion requesting the trial court to enter such an order; (2) noting the motion for consideration at least twenty days after the filing date; and (3) providing notice of the motion to any persons who had an interest in the property at the time of the sheriff's sale, and to any other person who filed a notice of appearance in the case.

would still be a very big risk for Ten Bridges to try to obtain the proceeds and that Ten Bridges would have to fight other creditors for the money. *Id.*

Just a few days before the one-year redemption period expired for Ms. Guandai to retain title to the condominium unit, and partially in reliance on Ten Bridges' representations about the risks she would face if she tried to obtain the funds herself and that other creditors would also try to obtain the funds, she agreed to assign to Ten Bridges any interest she had in the unit and her right to receive the \$89,000+ in surplus proceeds, in exchange for only \$15,000. CP 272.

Following the assignment, the Superior Court denied Ten Bridges' motion to obtain the entirety of the surplus proceeds. CP 279-280. The court held that Ten Bridges' agreement with Ms. Guandai violated RCW 63.29.350 and was therefore illegal, invalid, and unenforceable. *Id.* The court ruled that Ms. Guandai is entitled to receive the proceeds, except for \$15,000, which Ten Bridges will receive to reimburse it for what it paid Ms. Guandai for the assignment. *Id.*; *see also* 15 Wn. App.2d at 243.

Ten Bridges appealed the Superior Court's order. CP 281-284. The Court of Appeals affirmed the Superior Court's order in all respects. *See* 15 Wn. App.2d at 226, 243. The Court of Appeals denied Ten Bridges' Motion for Reconsideration, and Ten Bridges timely filed its Petition, albeit in the wrong court.⁵

III. ARGUMENT

Ten Bridges appears to argue that the Court should accept review of

⁵ Rather than filing its Petition for Review in the Court of Appeals as directed by RAP 13.4(a), Ten Bridges filed its Petition for Review in the Supreme Court.

its Petition under RAP 13.4(b)(1) (review should be granted if the Court of Appeals decision conflicts with a decision of the Supreme Court) and 13.4(b)(4) (review should be granted if the Petition “involves an issue of substantial justice that should be determined by the Supreme Court”).⁶ However, neither basis asserted by Ten Bridges provides justification for the Court to grant the Petition.

A. The Court of Appeals Decision Does Not Conflict With a Decision of the Supreme Court.

Ten Bridges argues that the Court of Appeals decision conflicts with *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995), and *Int’l Tracers of Am. v. Hard*, 89 Wn.2d 140, 570 P.2d 131 (1977). However, it does not, and RAP 13.4(b)(1) provides no basis to grant review.

1. *Nelson v. McGoldrick*:

In *Nelson*, the court ruled on the unconscionability of an heir-locating contract and the application of RCW 63.29.350 to property held by a private company. There, an heir-locating company contacted the widow of a decedent who had owned shares of stock held by an out-of-state corporation that the widow was entitled to receive, but who was unaware of their existence. The company refused to tell the widow anything about

⁶ Ten Bridges also argues that the decision conflicts with published decisions of the Court of Appeals, *see* Petition at 16-19, but the only Court of Appeals case Ten Bridges cites in support of this contention relates to an issue relevant only to the companion case decided in the same Opinion, Case No. 80456-1-I, *Ten Bridges, LLC v. Yukiko Asano*: whether a second Quit Claim Deed delivered to Ten Bridges by Ms. Asano after the Superior Court had invalidated the first Quit Claim Deed under RCW 63.29.350 is also illegal, invalid, and unenforceable under RCW 63.29.350, or whether it is severable from the illegal agreement and therefore enforceable. *See* 15 Wn. App.2d at 239. Ten Bridges has therefore failed to identify a published Court of Appeals decision with which the decision in this case conflicts, so RAP 13.4(b)(2) provides no basis for the Supreme Court to accept review of the Petition.

the shares unless she promised to give it half their value. The widow signed a contract with the company agreeing to pay it half the value of the property she received. But once the widow received the shares, she refused to pay the company and the company sued to enforce the agreement. 127 Wn.2d at 128.

The widow moved for summary judgment, arguing that the agreement was illegal, unconscionable, and against public policy. *Id.* The trial court granted the widow's motion, holding that the contract was unconscionable. *Id.* The Court of Appeals reversed the summary judgment and remanded the case to the trial court to determine whether the heir-finder had performed its obligations under the agreement. *Id.*

The Supreme Court accepted review and ruled that the contract could be unconscionable and that contract unconscionability can in some circumstances be decided as a matter of law, but remanded that issue to the trial court for further development of the evidentiary record. *Id.* at 133-34.

As to whether RCW 63.29.350 applied to the agreement, at that time, the statute only applied to property that had been "reported or paid or delivered to the Department of Revenue." *Id.* at 138. The property at issue—stock in an out-of-state corporation—had never been "reported or paid or delivered" to the Department of Revenue, but instead was under the corporation's control. *Id.* at 138. Because the statute on its face applied only to property that had been "reported or paid or delivered" to the Department of Revenue, the Court held that RCW 63.29.350 did not apply

to the agreement, and there was no reason for it to further examine the transaction to determine whether the statute applied to it. *Id.*

The Court of Appeals decision here does not conflict with *Nelson* because it is not based on the unconscionability of the agreement between Ten Bridges and Ms. Guandai, and the proceeds here are not held by a private company. After *Nelson*, RCW 63.29.350 was amended so that it now applies not only to property that has been “reported or paid or delivered” to the Department of Revenue, it also applies to, *inter alia*, “funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or *other liens*.” RCW 63.29.350(1) (Emphasis supplied). The surplus proceeds from the Sheriff’s foreclosure sale of Ms. Guandai’s condominium unit are held by the King County Superior Court Clerk, and therefore by King County. 15 Wn. App.2d at 235.⁷ Because the version of RCW 63.29.350 considered by the Supreme Court in *Nelson* was significantly different than the current version, the decision that RCW 63.29.350 prohibits the agreement between Ten Bridges and Ms. Guandai does not conflict with *Nelson*.⁸

⁷ While Ten Bridges challenged in the Superior Court and in the Court of Appeals whether funds held by a county clerk are “funds held by a county,” it did not discuss in the Petition the Court of Appeals ruling that surplus proceeds held by the clerk of the court are in fact held by a county; therefore, the issue is not before the Court in considering the Petition. *See infra* at 12-13.

⁸ Ten Bridges misleadingly asserts, “[I]n *Nelson*, the Washington Supreme Court refused to declare the property locator’s 50% contingent fee to be illegal under RCW 63.29.350 or otherwise.” *See* Petition at 14. The Court “refused” to rule that the fee agreement was illegal under RCW 63.29.350 because at that time, for the statute to apply the funds had to have been “reported or paid or delivered to the Department of Revenue,” and they had not. Having determined that no funds had been reported or paid or delivered to the Department of Revenue and that therefore RCW 63.29.350 was inapplicable to the case, the court did not further discuss the statute.

2. *Int'l Tracers of Am. v. Hard*:

In *Hard*, this court held that Washington law applied to an heir-locating contract for property held by Washington's Department of Revenue, and that the predecessor to RCW 63.29.350 (RCW 63.28.330) did not violate due process. There, a Florida company engaged in the business of locating heirs of decedents whose property would otherwise escheat to the state in which the property was located entered into a 40% contingent fee agreement with heirs of a Washington decedent who hired the company to locate assets of their decedent. The heir-locating company performed and assets were recovered by the decedent's estate from the Department of Revenue, but the heirs refused to pay the company, and the company sued. Among other arguments, the company claimed that RCW 63.28.330 did not apply. The trial court rejected that argument and entered judgment in favor of the company, but only for the 5% fee permitted by the statute. 89 Wn.2d at 143.

On appeal, the company disputed the application of the statute, but only on the basis that Florida law, and not Washington law, applied to the dispute. The company did not argue that the statute did not apply to the transaction under Washington law. Therefore, when this court affirmed the trial court's ruling that Washington law applied to the transaction, there was no reason to examine the agreement further to determine whether RCW 63.28.330 applied to it. *Id.* at 144-45.

The company further argued that if Washington law applied to the agreement, RCW 63.28.330 was unconstitutional because it violated the

company's due process rights. *Id.* at 147. The Court rejected this argument, invoking the long-established rule that “[a] state may, in the proper exercise of its police power, fix maximum rates or prices for services rendered.” *Id.* at 148 (citations omitted).

The rulings in *Hard* are not inconsistent with the Court of Appeals decision here. Indeed, the *Hard* court's analysis of the constitutionality of RCW 63.28.330 actually supports the Court of Appeals decision that RCW 63.29.350 applies to the transaction here and invalidates the contract and the Deed delivered by Ms. Guandai to Ten Bridges:

A statute is presumed constitutional unless the challenging party proves unconstitutionality beyond a reasonable doubt. ***For all we know from the face of the statute, the legislature might well have believed the practice prohibited was the evil of extortionate charges.*** The statute was carefully confined to apply only in cases of fees for locating or purporting to locate property “which he knows has been reported or paid or delivered to the (Department of Revenue) pursuant to this chapter. RCW 63.28.330. ***There is no showing the evil of extortionate charges did not exist. Such an evil may reasonably be conceived to have existed.***

Id. at 148 (internal citations omitted, emphasis supplied). Since *Hard* was decided, the statute has been repealed, recodified, and amended, and the transactions to which the 5% statutory cap on finder's fees applies now includes those involving funds held by a “county,” as in this case. RCW 63.29.350(1); *see also* 15 Wn. App.2d at 235. The “evil of extortionate charges” sought to be eliminated by the statute still exists and public policy supports the prohibition of contracts like the one Ten Bridges entered into with Ms. Guandai, and the invalidation of the Deed Ms.

Guandai delivered to Ten Bridges as part of the contract.

In summary, the Court of Appeals decision is entirely consistent with the decisions in *Nelson* and *Hard*. RAP 13.4(b)(1) provides no basis for the Court to accept review of Ten Bridges' Petition.

B. Ten Bridges' Petition Does Not Involve an Issue of Substantial Justice That Should be Determined by the Supreme Court.

While this case involves an issue of substantial justice—the prevention of predators like Ten Bridges from equity-skimming by purchasing former homeowners' rights to obtain surplus proceeds from foreclosure sales for a fraction of their actual value—it is not necessary for the Supreme Court to accept review and affirm the Court of Appeals to achieve that result. There are no decisions from any other division of the Court of Appeals with which the published decision below is at odds, and it is therefore binding on all trial courts in the State. *American Discount Corp.*, 129 Wn. App. at 355. The Court of Appeals decision has the same effect and application as if the Supreme Court had decided the case; there is thus no reason why the Supreme Court “should” accept review of the decision. RAP 13.4(b)(4).

Ten Bridges ominously warns that “[i]f the Court of Appeal’s opinion is upheld, the determination that RCW 63.29.350 applies in judicial foreclosure lawsuits like this will have widespread and unintended negative consequences throughout Washington.” *See* Petition at 5; *see also* Petition at 19. But Ten Bridges never identifies, much less discusses or explains, just what those “negative consequences” will be, or the evidence in the record supporting such a dire prediction. This is because there will

be no such “negative consequences”: the Court of Appeals decision will only help former homeowners who have unfortunately lost their homes to foreclosure retain the equity in their homes by prohibiting the onerous and unjust equity-skimming practice in which Ten Bridges engaged here. Ten Bridges’ mere contention that the decision is wrong is insufficient to prove that this case presents “an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b)(4).

Having failed to meet its burden to establish a basis for review under RAP 13.4(b), Ten Bridges insists that the Court of Appeals decision is wrong, but provides no argument for its contention that this establishes sufficient basis for the Court to grant review. Ten Bridges vaguely asserts that the application of RCW 63.29.350 to invalidate the agreement between Ten Bridges and Ms. Guandai is improper “for three different reasons,” but never discusses or explains, or even identifies, what those “three reasons” are. *See* Petition at 1, 7, & 19. Ms. Guandai therefore discusses the “three reasons” considered and rejected by the Court of Appeals. *See* 15 Wn. App.2d at 233.

1. RCW 63.29.350 applies to more than just proceeds from the foreclosure of government liens.

Ten Bridges’ argues that the legislative history of RCW 63.29.350 confirms that the statute applies only to government liens. But because the statute is plain and unambiguous, examination of the legislative history is neither warranted nor appropriate.

In construing a statute, the courts’ primary objective is to ascertain and “give effect to the legislature’s intent.” *TracFone Wireless, Inc. v.*

Dep't of Revenue, 170 Wn.2d 273, 281, 242 P.3d 810 (2010). Where a “statute’s meaning is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent.” *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004).

Plain language in a statute that is not ambiguous does not require further construction. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). If a statute is unambiguous or plain on its face, the Court must apply the statute as written and assume that the legislature meant exactly what it said. *TracFone Wireless*, 170 Wn.2d at 281. “A statute is ambiguous if it can reasonably be interpreted in two or more ways, but it is not ambiguous simply because different interpretations are conceivable.” *Berger v. Sonneland*, 144 Wn.2d 91, 105, 26 P.3d 257 (2001). If the language of the statute is unambiguous, a reviewing court is to rely solely on the statutory language. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 186 (2005) (citation omitted).

RCW 63.29.350 is plain and unambiguous on its face. It prohibits fees in excess of 5% for locating surplus proceeds from the foreclosure of “delinquent property taxes, assessments, *or other liens.*” (Emphasis supplied). Unpaid condominium association assessments constitute a lien against the unit for which they are levied. RCW 64.34.364(1). Nothing in RCW 63.29.350 states or evinces an intent by the legislature that its application should be limited only to “government liens” as Ten Bridges contends, instead of what the statute plainly states: that it applies to surplus proceeds from the foreclosure of all “other liens.” A court may not

add language to an unambiguous statute even if it believes the legislature intended something else but did not adequately express it. *Camp Fin., LLC v. Brazington*, 133 Wn. App. 156, 163, 135 P.3d 946 (2006).

Because the statute is plain and unambiguous on its face, any further examination of legislative intent by the Court is neither warranted nor appropriate. *TracFone Wireless*, 170 Wn.2d at 281. Nevertheless, if the Court examines the legislative history, it clearly supports the conclusion that the legislature intended that the statute apply to situations like those present here. When it added the provision in 2010 to the statute making it apply to proceeds from the foreclosure of all “other liens,” the House Bill Report for the legislation stated,

This is, essentially, a consumer protection bill that addresses a consumer protection problem stemming from the current wave of mortgage foreclosures. Following foreclosure proceedings, counties often receive excess funds from the foreclosure sale that should be reimbursed to the former home owners subject to such foreclosure. Unscrupulous individuals have set up businesses for assisting foreclosure victims in identifying and obtaining any funds due them and then charge unconscionable fees for doing so. The result has been the further victimization of those who have already lost their homes. This bill will help to remedy this problem by limiting the fees that can be charged by these businesses. It also provides remedies under the CPA.

House Bill Report HB 2428 (as passed Legislature on March 4, 2010). CP 185-187.⁹ This demonstrates that the legislature was aware of the limitations of the statute as it existed prior to the 2010 amendments and purposely chose not to restrict the statute’s application only to government

⁹ A copy of the House Bill Report is included in the Appendix to this Brief.

liens. Ten Bridges' suggestion that it did is supported neither by the plain and unambiguous language of the statute nor the legislative history.

2. Funds held in the King County Superior Court Registry are held by a "county."

The Court of Appeals properly rejected Ten Bridges' second "reason" that RCW 63.29.350 doesn't apply to the transaction between Ms. Guandai and Ten Bridges: that funds held in a superior court's registry are not "funds held by a county."¹⁰

The Court of Appeals decision contained an in-depth and persuasive analysis of why proceeds held in a superior court registry following the judicial foreclosure of a lien are "funds held by a county" under RCW 63.29.350. *See* 15 Wn. App.2d 234-36. In its Petition, Ten Bridges does not even acknowledge, much less critique or distinguish, this analysis and holding. Indeed, Ten Bridges does not even suggest that the Court of Appeals holding on this issue is incorrect. Most importantly, Ten Bridges provides no argument to suggest why the holding on this issue presents "an issue of substantial public interest that should be determined by the Supreme Court." The Court should not accept review of this case to revisit the Court of Appeals holding on this issue. RAP 13.4(b)(4).

3. Ten Bridges sought and contracted with Ms. Guandai for a fee or compensation for locating funds held by a county that are proceeds from a foreclosure of a lien.

RCW 63.29.350(1) prohibits "any person" from seeking or receiving from any person, or contracting with any person, "for any fee or compensation for locating or purporting to locate ... funds held by a

¹⁰ *See* 15 Wn. App.2d at 233.

county that are proceeds from a foreclosure for ... liens.”

Ten Bridges concedes that it “works nationally *to locate* surplus proceeds from foreclosure sales and to identify those individuals who have a right to assert a claim to those funds[.]” Petition at 1 (Emphasis supplied). Until Ten Bridges informed Ms. Guandai that there was about \$89,000 in proceeds from the foreclosure sale of her condominium unit held by “the court” and that she “might” be able to receive the funds, Ms. Guandai had no idea she had any right to any of the proceeds. CP 260, 270-271. Ten Bridges offered money to Ms. Guandai for her right to receive the proceeds, and ultimately entered into a contract to pay her \$15,000 for that right. CP 260, 271-272.

“Locate” is not defined in RCW 63.29.350. Therefore, the Court may use the dictionary definition to determine its plain meaning. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). To “locate” is “to seek out and discover the position of.” Webster’s Third New International Dictionary at 1327.¹¹ Clearly, as Ten Bridges admits in its Petition, it was “locating funds” for purposes of RCW 63.29.350 when it “located” the proceeds in the Court Registry that Ms. Guandai was entitled to receive, and when it identified and “located” her to inform her of the money and to determine whether she was willing to assign to it her right to receive the money.

But Ten Bridges contends it “never received a fee [from Ms. Guandai] to locate or purportedly locate property,” because “it disclosed the existence and location of the surplus proceeds to [her] up front and

¹¹ Similarly, Webster’s New Universal Unabridged Dictionary (2d Ed. 1979) defines “locate” as “to determine the position of after a search.”

free of charge in the quitclaim deed[.]” Petition at 14. Ten Bridges’ argument distorts what really occurred and ignores an important part of the statute.

RCW 63.29.350 does not merely prohibit the charging of a fee “for locating or purporting to locate ... funds held by a county that are proceeds from a foreclosure for ... other liens;” it also prohibits a person from “*seek[ing] ... or contract[ing]* with any person for any fee or compensation for locating” such funds. (Emphasis supplied). Ten Bridges sought, and contracted with Ms. Guandai to receive from her, a fee or compensation for locating the funds in the Court Registry. Ten Bridges did not disclose the existence and location of the surplus proceeds to Ms. Guandai before it offered to pay her \$15,000 to obtain the right to receive those proceeds. CP 260-261. Ten Bridges’ representative telephoned Ms. Guandai after the foreclosure sale and merely told her there was “approximately \$89,000 in surplus proceeds from this sale ... being held by the court.” CP 260. No evidence indicates that the representative told Ms. Guandai what “court” was holding the funds or how she could obtain them.

Ten Bridges’ representative offered Ms. Guandai a lump sum payment of \$15,000 in exchange for the conveyance of all her rights in her home, including her right of redemption and her ability to make a claim for the proceeds. CP 260-261. That offer was made *before* Ten Bridges sent her the Deed to sign. *Id.* Thus, by offering Ms. Guandai \$15,000 for her right of redemption and her right to receive the proceeds before it

disclosed to her where the funds were located, it was “seek[ing] ... [a] fee or compensation for locating ... funds held by a county that are proceeds from a foreclosure for ... other liens.” RCW 63.29.350(1).

After many calls from Ten Bridges, Ms. Guandai finally agreed to assign to it her right to receive the proceeds in exchange for \$15,000. For that \$15,000, Ten Bridges believed it was obtaining the right to receive the entire \$89,000+ in the Court Registry, which would result in a fee or compensation to it of over \$74,000. By entering into the agreement with Ms. Guandai, Ten Bridges clearly “contract[ed] with” her for a “fee or compensation for locating” the “funds held by a county that are proceeds from a foreclosure for ... other liens,” which is prohibited by RCW 63.29.350.

Nor did the Deed form sent by Ten Bridges to Ms. Guandai identify the location of the surplus proceeds or include any information about how Ms. Guandai could obtain them, as Ten Bridges incorrectly asserts. CP 164-166. The Deed identifies the number of the King County Superior Court case in which the foreclosure of her condominium was ordered, but does not state that the proceeds are on deposit with the Clerk of the Court in the Registry for that case. *Id.* And the Deed doesn’t state that there are *any* recoverable proceeds, instead reciting, “Grantee seeks to acquire the interests of Grantor in the Property, to include Grantor’s potential right of redemption and the rights in anticipation of: ... the Grantee seeking to recover at its own expense *any surplus proceeds* up to the approximately \$90,000 held by the court after payment of the underlying judgement (sic),

or amounts remaining after any successful claims by other foreclosed lienholders, all for its own benefit.” CP 97-98 (emphasis supplied).

In any event, Ten Bridges, contrary to its representations in the Petition, never disclosed the existence and location of the surplus proceeds to Ms. Guandai—much less for free. By offering to pay Ms. Guandai for her right to obtain surplus proceeds and by entering into the contract to pay her \$15,000 in exchange for her right to obtain the proceeds, Ten Bridges violated RCW 63.29.350, invalidating the agreement.

Ten Bridges also argues that the Court of Appeals improperly employed the “substance over form rule” to interpret RCW 63.29.350. *See* Petition at 10, 12, 13, 16, & 20. But Ten Bridges misstates the Court of Appeals’ basis for its ruling and conflates statutory construction with contract interpretation.

The Court of Appeals properly invoked rules of statutory construction in applying RCW 63.29.350 to the agreement between Ms. Guandai and Ten Bridges. 15 Wn. App.2d 232-36. The court made it clear it was applying “substance over form” to examine the agreement, not to interpret RCW 63.29.350. In other words, the court determined whether the statute applies to the actual substance of the agreement—not merely the agreement’s form.¹² The court was required by over a century of precedent to venture beneath Ten Bridges’ characterization of the transaction (*i.e.*, as

¹² *See* 15 Wn. App.2d at 236-37 (“To determine whether Ten Bridges’ agreements with Asano and Guandai violate the statute, we must evaluate how and why Ten Bridges was compensated by examining the substance and not the form of the agreements. . . . When deciding whether a law applies to a contract, we are ‘guided by the substance or effect of the transaction rather than the particular form or label adopted.’”) (Citation in footnote omitted).

a “mere real estate transaction[],” *see id.*) and to examine its actual substance: “As the court in *Hafer v. Spaeth*, [22 Wn.2d 378, 156 P.2d 408 (1945)] noted over 30 years ago, the test of substance over form has been uniformly applied in this State.” *Sullivan v. White*, 13 Wn. App. 668, 671, 536 P.2d 1211 (1975) (citations omitted).

Ten Bridges also argues that applying the Court of Appeals’ application of the substance over form rule “to interpret the reach of RCW 63.29.350” amounts to the “subver[sion of] the will of the legislature.” *See* Petition at 20. But courts have the obligation to interpret statutes implicated by the facts in cases before them. Construing a statute to determine if it applies to the facts in a case does not constitute a “subversion of the will of the legislature”; indeed, it is a court’s obligation to evaluate and determine whether a contract is contrary to public policy and/or the terms and policy of a statute, and “[i]n determining whether a contract is contrary to public policy, the test is not merely what the parties actually did, or contemplated doing, in order to carry out the contract, or even the actual result of its performance, but, rather, whether the contract as made has a tendency to evil.” *Goodier v. Hamilton*, 172 Wash. 60, 62-63, 19 P.2d 392 (1933). In RCW 63.29.350, the legislature made the public policy decision to outlaw those transactions that fall within its terms.¹³ The Court does not have the mere option to examine the

¹³ *See H.O. Meyer Drilling Co. v. Alton V. Phillips Co.*, 2 Wn. App. 600, 605, 468 P.2d 1008 (1970), *aff’d* 79 Wn.2d 431, 486 P.2d 1071 (1971) (“The canons of construction are intended to ascertain the intention of the legislature by looking to the mischief intended to be eliminated by the act, the spirit of the act, and the reasonableness of the proposed interpretation.”).

substance of Ten Bridges' agreement with Ms. Guandai to determine whether it violated RCW 63.29.350 and was therefore illegal, invalid, and unenforceable; it has the duty to do so. The Court of Appeals fulfilled this mandatory obligation when it examined whether the substance of the agreement between Ten Bridges and Ms. Guandai violated RCW 63.29.350, and that examination resulted in the correct conclusion that Ten Bridges' equity-skimming agreement with Ms. Guandai is the very type of transaction the legislature intended to prohibit, and is therefore invalid and unenforceable. Further, the Deed Ten Bridges received from Ms. Guandai was an integral part of the transaction and is therefore also invalid and unenforceable. The Court of Appeals decision is correct, and RAP 13.4(b)(4) provides no basis for this Court to accept review of the Court of Appeals decision.

IV. CONCLUSION

The Court of Appeals correctly decided this case, and no basis exists for this Court to re-examine the decision. The Court should deny Ten Bridges' Petition for Review.

DATED: March 1, 2021.

BERRY & BECKETT, PLLP

/s/ Guy Beckett
Guy W. Beckett, WSBA#14939
Attorneys for Teresia Guandai

DECLARATION OF SERVICE

Guy W. Beckett declares:

On March 1, 2021, I sent by electronic mail copies of the foregoing

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I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

SIGNED THIS 1st day of March, 2021, at Seattle, Washington.

/s/ Guy Beckett
Guy W. Beckett, WSBA #14939

APPENDIX

Part One: 2010 c 29 § 2 (with revisions)
Part Two: House Bill Report HB 2428 (2010)

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2428

Chapter 29, Laws of 2010

61st Legislature
2010 Regular Session

UNCLAIMED PROPERTY--RECOVERY FEES

EFFECTIVE DATE: 06/10/10

Passed by the House February 10, 2010
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2010
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved March 12, 2010, 1:58 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 2428 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 12, 2010

Secretary of State
State of Washington

HOUSE BILL 2428

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Representatives Takko, Warnick, Springer, Parker, Eddy, Morrell,
Kelley, O'Brien, Bailey, and Ormsby; by request of Attorney General

Prefiled 12/07/09. Read first time 01/11/10. Referred to Committee
on Local Government & Housing.

1 AN ACT Relating to fees for locating surplus funds from county
2 governments, real estate property taxes, assessments, and other
3 government lien foreclosures or charges; amending RCW 63.29.350; and
4 reenacting and amending RCW 63.29.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 Sec. 1. RCW 63.29.020 and 2005 c 502 s 3 and 2005 c 367 s 1 are
7 each reenacted and amended to read as follows:

8 (1) Except as otherwise provided by this chapter, all intangible
9 property, including any income or increment derived therefrom, less any
10 lawful charges, that is held, issued, or owing in the ordinary course
11 of the holder's business and has remained unclaimed by the owner for
12 more than three years after it became payable or distributable is
13 presumed abandoned.

14 (2) Property, with the exception of unredeemed Washington state
15 lottery tickets and unrepresented winning parimutuel tickets, is payable
16 and distributable for the purpose of this chapter notwithstanding the
17 owner's failure to make demand or to present any instrument or document
18 required to receive payment.

1 (3) This chapter does not apply to claims drafts issued by
2 insurance companies representing offers to settle claims unliquidated
3 in amount or settled by subsequent drafts or other means.

4 (4) This chapter does not apply to property covered by chapter
5 63.26 RCW.

6 (5) This chapter does not apply to used clothing, umbrellas, bags,
7 luggage, or other used personal effects if such property is disposed of
8 by the holder as follows:

9 (a) In the case of personal effects of negligible value, the
10 property is destroyed; or

11 (b) The property is donated to a bona fide charity.

12 (6) This chapter does not apply to a gift certificate subject to
13 the prohibition against expiration dates under RCW 19.240.020 or to a
14 gift certificate subject to RCW 19.240.030 through 19.240.060.
15 However, this chapter applies to gift certificates presumed abandoned
16 under RCW 63.29.110.

17 (7) Except as provided in RCW 63.29.350, this chapter does not
18 apply to excess proceeds held by counties, cities, towns, and other
19 municipal or quasi-municipal corporations from foreclosures for
20 delinquent property taxes, assessments, or other liens.

21 **Sec. 2.** RCW 63.29.350 and 1983 c 179 s 35 are each amended to read
22 as follows:

23 (1) It is unlawful for any person to seek or receive from any
24 person or contract with any person for any fee or compensation for
25 locating or purporting to locate any property which he knows has been
26 reported or paid or delivered to the department of revenue pursuant to
27 this chapter, or funds held by a county that are proceeds from a
28 foreclosure for delinquent property taxes, assessments, or other liens,
29 or, funds that are otherwise held by a county because of a person's
30 failure to claim funds held as reimbursement for unowed taxes, fees, or
31 other government charges, in excess of five percent of the value
32 thereof returned to such owner. Any person violating this section is
33 guilty of a misdemeanor and shall be fined not less than the amount of
34 the fee or charge he has sought or received or contracted for, and not
35 more than ten times such amount, or imprisoned for not more than thirty
36 days, or both.

1 (2) The legislature finds that the practices covered by this
2 section are matters vitally affecting the public interest for the
3 purpose of applying the consumer protection act, chapter 19.86 RCW.
4 Any violation of this section is not reasonable in relation to the
5 development and preservation of business. It is an unfair or deceptive
6 act in trade or commerce and an unfair method of competition for the
7 purpose of applying the consumer protection act, chapter 19.86 RCW.
8 Remedies provided by chapter 19.86 RCW are cumulative and not
9 exclusive.

Passed by the House February 10, 2010.
Passed by the Senate March 4, 2010.
Approved by the Governor March 12, 2010.
Filed in Office of Secretary of State March 12, 2010.

HOUSE BILL REPORT

HB 2428

As Passed Legislature

Title: An act relating to fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

Brief Description: Concerning fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

Sponsors: Representatives Takko, Warnick, Springer, Parker, Eddy, Morrell, Kelley, O'Brien, Bailey and Ormsby; by request of Attorney General.

Brief History:

Committee Activity:

Local Government & Housing: 1/25/10, 1/27/10 [DP].

Floor Activity:

Passed House: 2/10/10, 96-0.

Passed Senate: 3/4/10, 47-0.

Passed Legislature.

Brief Summary of Bill

- Prohibits a business which provides the service of matching specified unclaimed property held by counties, cities, and other municipalities with the owners of such property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.
- Establishes that a business that violates the fee limitation provisions of the Uniform Unclaimed Property Act is in violation of the state Consumer Protection Act.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 11 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fagan, Miloscia, Short, Springer, Upthegrove, White and Williams.

Staff: Thamas Osborn (786-7129).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Uniform Unclaimed Property Act.

Under the state Uniform Unclaimed Property Act (UUPA), a business that holds unclaimed intangible property must transfer it to the Department of Revenue (DOR) after a holding period set by statute. The holding period varies by type of property, but for most unclaimed property the period is three years. After the holding period has passed, the business in possession of the property must transfer it to the DOR.

Under the UUPA, the DOR's duty is to find the rightful owner of the property, if possible. One of the DOR's responsibilities is to place a notice by November 1 of each year in a newspaper of general circulation in each county which contains the last known address of an apparent owner of unclaimed property that is reported and turned over to the state in that year. If the DOR does not have any such address, then the notice must be published in the county in which the holder of the property has its principal place of business. The DOR is required to mail notices by September 1 of each year to apparent owners of unclaimed property that has been reported and turned over to the state in that year. The notice must contain the name and last known address of the person holding the property.

Under certain circumstances, counties, cities, and other municipal corporations are not subject to the UUPA, and are therefore exempt from the DOR reporting requirements regarding specified types of abandoned property. Such property includes certain canceled warrants, uncashed checks, excess proceeds from foreclosures pursuant to the enforcement of property tax delinquencies, and property tax overpayments or refunds. The local government may retain such property until notified by the owner but must provide a listing of such property to the DOR.

Businesses that match unclaimed property held by the DOR with the owner are known as "heir locators." These businesses are prohibited from charging the owner a fee of more than 5 percent of the property's value.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. The state Attorney General may bring an action to enforce the provisions of the CPA.

Under the CPA, a person may bring a civil court action if the person is injured in his or her business or property through: (1) unfair competition or practices; (2) contracts, combinations, or conspiracies in restraint of trade; (3) monopolies or attempted monopolies; (4) transactions and agreements not to use or deal in commodities or services of a competitor; or (5) acquisition of corporate stock by another corporation to lessen competition. Furthermore, a person may be considered injured if he or she refuses to accede to a proposal for an arrangement that, if consummated, would constitute one of these prohibited acts. The civil action may be to enjoin further violations, to recover actual damages, or both, together with the costs of the suit, including a reasonable attorney's fee. The court may, in its

discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

Summary of Bill:

The act eliminates the blanket exemption from the UUPA regulations as they apply to excess, unclaimed proceeds from property tax foreclosures, assessments, and liens held by counties, cities, and other municipalities. Specifically, the act prohibits businesses which provide the service of matching such unclaimed property with the owners of the property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.

A business that exceeds this fee limitation is in violation of the state CPA and is therefore subject to the remedies provided under the CPA.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is, essentially, a consumer protection bill that addresses a consumer protection problem stemming from the current wave of mortgage foreclosures. Following foreclosure proceedings, counties often receive excess funds from the foreclosure sale that should be reimbursed to the former home owners subject to such foreclosure. Unscrupulous individuals have set up businesses for assisting foreclosure victims in identifying and obtaining any funds due them and then charge unconscionable fees for doing so. The result has been the further victimization of those who have already lost their homes. This bill will help to remedy this problem by limiting the fees that can be charged by these businesses. It also provides remedies under the CPA.

(Opposed) None.

Persons Testifying: Representative Takko, prime sponsor; Jim Sugarman, Office of Attorney General; and Rose A. Bowman, Washington Association of County Treasurers.

Persons Signed In To Testify But Not Testifying: None.

BERRY & BECKETT, PLLP

March 01, 2021 - 2:01 PM

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