

FILED
SUPREME COURT
STATE OF WASHINGTON
4/22/2022 3:23 PM
BY ERIN L. LENNON
CLERK

100845-7

No. 82649-2-I

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

TSIGEREDA TEKLU

Respondent,

v.

DJAMSHID SETAYESH,

Petitioner.

PETITION FOR REVIEW

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I. Identity of Petitioner

Petitioner Djamshid Setayesh was the Defendant in the Superior Court and Appellant before the Court of Appeals.

II. Court of Appeals Decision

Setayesh seeks review of the published Court of Appeals opinion affirming the Superior Court's grant of summary judgment in favor of Respondent Tsigereda Teklu and denial of summary judgment in favor of Setayesh. *Teklu v. Setayesh*, No. 82649-2-I (2022). The Court of Appeals opinion is attached hereto as Appendix A. The Court of Appeals order denying Setayesh's motion for reconsideration is attached hereto as Appendix B.

III. Issues Presented for Review

- A. Is an assessor's tax parcel number a sufficient substitute for a legal description to satisfy the statute of frauds?
- B. Can improvements to real property which were made in violation of a contract between parties constitute

partial performance of that contract to remove it from the statute of frauds?

IV. Statement of the Case

Plaintiff/Respondent Tsigereda Teklu and Defendant/Appellant Djamshid Setayesh signed a lease agreement, purchase and sale agreement, and option to purchase agreement on 10/7/2015. The agreements refer to an “Exhibit A” purportedly containing a legal description but none of the documents contains an “Exhibit A.” The purchase and sale agreement includes a tax parcel number.

Teklu attempted to exercise the option but Setayesh refused to sell, asserting that the agreements were void for violation of the statute of frauds. Teklu filed suit in Snohomish County Superior Court.

The legal description publicly available on the Snohomish County Assessor’s website is erroneous and contains a series of abbreviations and numbers whose meaning remain unknown. Slip Op. at 9.

The Snohomish County Auditor maintains records of recorded documents that contain the legal description of the property in dispute. But, the agreements between the parties do not contain a reference to any of these documents.

The trial court granted summary judgment in favor of Teklu on the basis that the tax parcel number constituted a reference to public documents on file with Snohomish County Auditor which contained a legal description.

The Court of Appeals opinion affirms the trial court holding that:

because the purchase and sale agreement that Djamshid Setayesh entered into with Tsigereda Teklu contained the tax parcel number and the county in which the property was located, the agreement referred a person of ordinary intelligence to the property account summary containing the “sales history table” on file in the Snohomish County assessor’s office, which in turn referred such a person to the complete legal description in the six most recent deeds to the property on record with the Snohomish County auditor. Here, the inclusion of the tax parcel number coupled with the county in which the property was located satisfied the legal description requirement of the statute of frauds.

Slip Op. at 2.

This holding, however, rests upon an untrue statement of fact. The “sales history table” on file with the Assessor **does not** refer a person of ordinary intelligence to any specific records on file with the Auditor.

The columns in the sales history table include the sale date, recording date, recording number, grantor, and grantee. CP 100. However, the recording numbers for every single deed is blank. *Id.*; CP 41 ¶¶ 5-9.

The Court of Appeals opinion relies upon a false assertion made in the declaration of Teklu’s attorney that the deeds containing legal descriptions “incorporate[] by reference the officially recorded documents.” Slip Op. 2, 9, CP 100.

Neither the agreements between the parties nor the documents maintained by the Assessor contain a reference to documents maintained by the Auditor.

Teklu's alternate theory was that, even if the agreements between the parties were unenforceable under the statute of frauds that the agreements were still enforceable under the doctrine of part performance. Teklu relied upon her occupation of the property, payment of rent, and a minor remodel project to widen a hallway and modify two bathrooms.

Setayesh argued that Teklu had not proven part performance because: (1) Teklu did not exclusively occupy the property because he had lived there for six months of the five year tenancy; (2) Teklu did not tender the purchase price or late fees because she paid rent late every month for the duration of the tenancy; and (3) the lease agreement expressly forbid Teklu to make any improvements and so any improvements she made constituted breaches, not part performance of the agreement.

Neither the Superior Court nor the Court of Appeals reached this issue because they found the parcel number satisfied the statute of frauds.

V. Argument

“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... (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” RAP 13.4(b).

A. The Court of Appeals opinion conflicts with the Supreme Court’s opinions in *Martin v. Seigel* which requires contracts for the sale of land to include legal descriptions and impermissibly extends the limited exception to that rule found in *Bingham v. Sherfey*.

Washington’s statute of frauds requires contracts for the sale of land to “contain a description of the land sufficiently definite to locate it without recourse to oral testimony.” *Key Design Inc. v. Moser*, 138 Wn.2d 875, 881, 983 P.2d 653

(1999) (citing *Martinson v. Cruikshank*, 3 Wn.2d 565, 567, 101 P.2d 604 (1940)).

Failure to include a legal description in a contract for the sale of real property renders the contract void and unenforceable under the statute of frauds. *Losh Family, LLC v. Kertsman*, 155 Wn. App. 458, 464, 228 P.3d 793, 796–97 (2010).

In the landmark opinion of *Martin v. Seigel*, 35 Wn.2d 223, 212 P.2d 107 (1949), the parties' contract identified the property at issue by street address. The contract did not contain a legal description. The Supreme Court held that the contract was unenforceable under the statute of frauds reasoning: "We feel that it is fair and just to require people dealing with real estate to properly and adequately describe it, so that courts may not be compelled to resort to extrinsic evidence in order to find out what was in the minds of the contracting parties." *Id.* at 228.

The fact that the parties obtained a title policy that contained a legal description did not persuade this Court. The

contract was “not a sufficient memorandum to satisfy the Statute of Frauds, nor does it incorporate by reference any other instrument, either Exhibit 1 [i.e. the title policy] or otherwise, that does contain an adequate legal description to satisfy the Statute of Frauds; that parol evidence would have to be resorted to, to connect the real estate described in the plaintiff’s complaint with that described in Exhibit 1 and Exhibit 3 [i.e. the agreement], and that therefore the Exhibit 3 is void and not enforceable.” *Id.* at 225.

The Court of Appeals in this case ignored the prohibition against resorting to extrinsic evidence and characterized the Supreme Court’s opinion in *Bingham v. Sherfey*¹ as a “recognized exception” authorizing substitution a tax parcel number for a legal description in all cases. Slip Op. at 1, 8.

But *Bingham* articulates no such exception. Instead, *Bingham* merely authorized contracting parties to do what they have always been able to do: include a legal description through

¹ 38 Wn.2d 886, 234 P.2d 489 (1951)

incorporation by reference. 38 Wn.2d at 889. “We have held that, in order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony, or else must contain a reference to another instrument which does include a sufficient description.” *Id.* (Collecting cases.) The *Bingham* court then proclaimed “This is consistent with the rule announced in *Martin v. Seigel.*” *Id.*

The contract in *Bingham* set forth the legal description as “Tax No. 3, in Section Thirty-one, in Township Twelve, North, of Range Forty-two [E.W.M. being furnished by judicial notice], as a present designated on the tax rolls in the office of the County Assessor of said county.” *Id.*

The *Bingham* description is clearly an incorporation by reference of the metes and bounds legal description which the county assessor is required by statute to maintain in the tax rolls. That is, a reference to a specific document.

This case presents a different fact pattern. The agreement here attempted to incorporate by reference an “Exhibit A” but the agreement contained no such exhibit. It is an incorporation by reference of a document which does not actually exist. The courts below have relied upon the inclusion of the tax parcel number in another part of the agreement in the absence of any evidence of an intent to incorporate any other document by reference.

Even assuming the courts below did not err in following the tax parcel number to the Assessor’s records, though, those records contain an erroneous legal description: “SEC 17 TWP 27 RGE 04RT-1B-1) N 130FT OF E 190FT OF NW 1/4 NE 1/4 LESS RDS.” Slip Op. at 9. The Court of Appeals recognizes that this is not consistent with the actual legal description of the property. *Id.* at 10-11.

But based upon the Court of Appeals’ erroneous interpretation of *Bingham*, it proceeded to conclude, in reliance on inadmissible extrinsic evidence, that “the discrepancy in the

abbreviated legal description contained in the property account summary must be considered in the context of the sales history table included in the assessor's property account summary. And in turn, the sales history table refers a person of ordinary intelligence to the complete legal description in the deeds associated with that sales history on file with the county auditor." Slip Op. at 11. This is a mistaken conclusion of fact because the sales history table does not contain recording numbers and therefore cannot constitute a reference to those records.

The Court of Appeals then rejected Setayesh's argument that *Martin* forbids resorting to the extrinsic evidence of Teklu's attorney's declaration setting forth his search on various county websites to furnish a legal description. It concluded "the distinction the court made in Martin is not applicable here because, consistent with Bingham, the reference in the purchase and sale agreement to the tax parcel number refers a person of ordinary intelligence to the assessor's records

noted in the property tax summary and in turn to the auditor's documents containing a complete legal description. Such a reference to the tax parcel number does not implicate parol evidence as the court contemplated in Martin." Slip Op. at 11-12.

The Supreme Court should accept review to clarify the interplay between *Martin* and *Bingham*. *Martin* sets forth a bright line rule: contracts and deeds for the conveyance of real property must include a legal description to comply with the statute of frauds. *Bingham* authorizes parties to incorporate a legal description by reference to a county's tax records.

Bingham does not stand for the proposition that a tax parcel number by itself constitutes a valid substitute for a valid legal description in all cases. This is particularly so where, as in this case, the tax records contain an erroneous legal description and contain no specific reference to other records containing a correct legal description. One Court of Appeals decision has expressly rejected that argument where a plaintiff presented no

evidence that the county assessor had fulfilled the duty to maintain an accurate legal description. *Asotin County. Port Dist. v. Clarkston Community Corp.*, 2 Wn. App. 1007, 472 P.2d 554 (1970).

In this case, nothing resolves the latent ambiguity between the legal description contained in the assessor's records and those in the auditor's records. This sort of problem is precisely why this Court created the clear rule in *Martin*. If parties cannot be bothered to accurately describe the real property in their contract, it is not the role of the court to perform an exhaustive search of public records to furnish a description for them.

The Court of Appeals' decision is particularly troubling in this case because it effectively overrules the clear rule set forth in *Martin* sub silentio. As argued by Setayesh before the trial court and the Court of Appeals, the county auditor's records can be found just as easily by searching for the street address as a tax parcel number. This creates an arbitrary

distinction where a contract containing a street address is invalid but a contract containing a parcel number is valid even though both pieces of information would supposedly lead a person of ordinary intelligence to the same public records.

Only the Supreme Court can overrule *Martin*. It declined to do so more than 20 years ago in *Key Design Inc. v. Moser*, 138 Wn.2d 875, 882-84, 983 P.2d 653 (1999). The Supreme Court should accept review of this case to clarify the continuing authority of *Martin* and reject the expansion of *Bingham* beyond its limited and unique circumstances.

The issues in this case are also of supreme public importance. The purchase of a home is the most significant financial transaction that many people make in their lives. The people of Washington are entitled to know the minimum requirements to make the contracts facilitating such major transactions legally enforceable.

B. If the Supreme Court accepts review, it should also address the issue of part performance.

The trial court and Court of Appeals did not address the issue of part performance in this case because they resolved the case on the statute of frauds issue.

If the Court grants to review of this case, it should resolve the issue of part performance in Setayesh's favor.

To remove a contract from the statute of frauds, the proponent of the contract must prove:

(1) delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial and valuable improvements, **referable to the contract.**

Berg v. Ting, 125 Wn.2d 544, 556, 886 P.2d 564 (1995)

(emphasis added). Part performance must be proved "by evidence that is clear and unequivocal and which leaves no doubt as to the terms, character, and existence of the contract."

Powers v. Hastings, 93 Wn.2d 709, 713, 612 P.2d 371 (1980).

The case law does not require proof of all three elements. Payment of the purchase price is generally considered the least persuasive factor while improvements have been held to be the “strongest and most unequivocal.” *Powers*, 93 Wn.2d at 722. “Generally, the cases require some conduct by the tenant or landlord beyond possession and payment.” *Ben Holt Indus., Inc. v. Milne*, 36 Wn. App. 468, 474, 675 P.2d 1256 (1985).

No case that Setayesh or Teklu could find appears to address the primary question in this case: whether tenant improvements under an alleged option to purchase can constitute part performance where the agreements expressly forbid the tenant from making improvements.

Setayesh argued below that such conduct which clearly violates the terms of the agreements between the parties cannot simultaneously constitute part performance of those agreements. But no case addresses the question head on—presumably because a breach of a contract by definition cannot be part performance of that contract.

Teklu relied upon authority stating that actions taking in pursuance of the contract are inherently “referable to the contract” even if no specific contract term addresses them citing *Borrow v. Borrow*, 34 Wash. 684, 691, 76 P. 305 (1904). That is, the improvements “would not have been done unless with a direct view to the performance of that very agreement.” *Friedl v. Benson*, 25 Wn. App. 381, 390, 609 P.2d 449 (1980). Neither case involved a contract that expressly forbid improvements.

Given the lack of authority addressing whether improvements made in violation of a contract prohibiting improvements can constitute part performance of that contract, the Supreme Court should accept review on this issue as well to make clear that breaching a contract is not part performance of that contract.

VI. Conclusion

The courts below decided this case contrary to long established Supreme Court precedent. The Court should accept

review of this case to confirm the continuing vitality of the rule in *Martin* that contracts for the sale of land require legal descriptions. The Court should also clarify the limited exception in *Bingham* which caused the Court of Appeals to incorrectly hold that tax parcel numbers automatically constitute a sufficient substitute for legal descriptions in all cases. Finally, the Court should state definitively that improvements made in violation of a contract cannot constitute part performance of that contract to remove it from the statute of frauds.

I certify that this Motion contains 2,794 words in compliance with RAP 18.17.

Dated this 22nd day of April, 2022.

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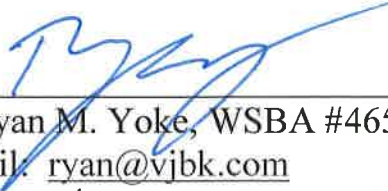
CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Petition for Review upon counsel for Respondent/Plaintiff Tsigereda Teklu on April 22, 2022 through the Court of Appeal's Electronic Filing System as identified below:

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APPENDIX A – SLIP OPINION

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

TSIGEREDA TEKLU,)	No. 82649-2-1
)	
Respondent,)	
)	
v.)	
)	
DJAMSHID SETAYESH,)	PUBLISHED OPINION
)	
Appellant.)	
_____)	

VERELLEN, J. — The general rule in Washington “subject to some exceptions and qualifications” is that a document that transfers an interest in land must contain a legal description to satisfy the statute of frauds. But one recognized exception to Washington’s strict legal description requirement is reference to an assessor’s tax parcel number. Specifically, if a document transferring an interest in land contains the tax parcel number and the county in which the property is located, that reference is sufficient to satisfy the statute of frauds if the tax parcel number refers a person of “ordinary intelligence” to records on file in the county assessor’s office or in turn to documents on record with the county auditor containing the complete legal description. Such a reference to the tax parcel number and county “furnishes the legal description of the real property

involved with sufficient definiteness and certainty to meet the requirements of the statute of frauds.”¹

Here, because the purchase and sale agreement that Djamshid Setayesh entered into with Tsigereda Teklu contained the tax parcel number and the county in which the property was located, the agreement referred a person of ordinary intelligence to the property account summary containing the “sales history table” on file in the Snohomish County assessor’s office, which in turn referred such a person to the complete legal description in the six most recent deeds to the property on record with the Snohomish County auditor. Here, the inclusion of the tax parcel number coupled with the county in which the property was located satisfied the legal description requirement of the statute of frauds.

Therefore, we affirm.

FACTS

Djamshid Setayesh owned a parcel of real property in Lynnwood, Washington. On October 7, 2015, Setayesh entered into a lease agreement, a purchase and sale agreement, and an option to purchase agreement with Tsigereda Teklu. The agreements provided Teklu with a five-year lease and an option to purchase the property “on or before October 2020.”²

The property was identified in the purchase and sale agreement as Tax Parcel No. 27041700100700 (Snohomish County), 6416 180th Street SW

¹ Bingham v. Sherfey, 38 Wn.2d 886, 889, 234 P.2d 489 (1951).

² Clerk’s Papers (CP) at 140, 143.

Lynnwood, Washington, 98037. The agreement also provided that the legal description was "Attached as Exhibit A,"³ but there was no Exhibit A attached.

On September 4, 2019, Teklu exercised the option. Setayesh refused to sell Teklu the property. Teklu brought an action for specific performance against Setayesh.

About a year later, Teklu filed a summary judgment motion. Teklu argued that either she was entitled to specific performance by the terms of the purchase and sale agreement or, in the alternative, based upon part performance. Setayesh responded that the purchase and sale agreement was unenforceable for failure to contain an adequate legal description of the property and that Teklu could not establish her claim of part performance as a matter of law.

The court granted Teklu's summary judgment motion. Setayesh filed a motion for reconsideration, arguing that Teklu failed to proffer adequate evidence to support her claim that using the tax parcel number in a county records search would reveal documents containing a complete legal description of the property. The court granted Setayesh's motion for reconsideration and vacated its initial order.

The next year, Teklu filed a second summary judgment motion, explaining step-by-step how a person could enter the tax parcel number into the assessor's website and find the assessor's property account summary with an abbreviated legal description, together with a sales history table referencing the documents on

³ CP at 128.

file with the county auditor, including the six most recent deeds to the property containing a complete legal description. Setayesh filed a cross motion for summary judgment, again arguing that the purchase and sale agreement failed to comply with the legal description requirement of the statute of frauds and that Teklu did not establish part performance.

On April 23, 2021, in separate orders, the trial court granted Teklu's summary judgment motion and denied Setayesh's cross motion for summary judgment. The court concluded the purchase and sale agreement satisfied the statute of frauds because the tax parcel number coupled with the county in which the property was located constituted a sufficient legal description. The court also granted Teklu attorney fees and costs.

Setayesh appeals.

ANALYSIS

I. Statute of Frauds

Setayesh argues that the trial court erred in granting Teklu specific performance of the purchase and sale agreement because the agreement did not contain a legal description required by the statute of frauds.

We review an order granting summary judgment de novo.⁴ "Summary judgment is proper only when there are no genuine issues of material fact and the

⁴ Marina Condo. Homeowner's Ass'n v. Stratford at Marina, LLC, 161 Wn. App. 249, 255, 254 P.3d 827 (2011) (citing Hadley v. Maxwell, 144 Wn.2d 306, 310, 27 P.3d 600 (2001)).

moving party is entitled to judgment as a matter of law.”⁵ In reviewing an order of summary judgment, “we engage in the same inquiry as the trial court, considering the facts and all reasonable inferences from the facts in the light most favorable to the nonmoving party.”⁶

The general rule in Washington, “subject to some exceptions and qualifications[,] is that a document that transfers an interest in land must describe the land by its full legal description” to satisfy the statute of frauds.⁷ In Martin v. Seigel,⁸ our Supreme Court held that a legal description must be “sufficiently definite” to locate the land “without recourse to oral testimony.”⁹ And in Turpen v. Johnson,¹⁰ our Supreme Court further explained that a legal description is sufficient “if a person of ordinary intelligence and understanding can successfully use the description in an attempt to locate and identify the particular property sought to be conveyed.”¹¹

⁵ Id. (citing CR 56(c)).

⁶ Id. (citing Right-Price Recreation, LLC v. Connells Prairie Cmty. Council, 146 Wn.2d 370, 381, 46 P.3d 789 (2002)).

⁷ 18 WILLIAM B. STOEBUCK AND JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 13.3, at 78 (2004).

⁸ 35 Wn.2d 223, 212 P.2d 107 (1949).

⁹ Id. at 227 (quoting Martinson v. Cruikshank, 3 Wn.2d 565, 101 P.2d 604 (1940); see also Ecolite Mfg. Co., Inc. v. R.A. Hanson Co., Inc., 43 Wn. App. 267, 271, 716 P.2d 937 (1986)).

¹⁰ 26 Wn.2d 716, 175 P.2d 495 (1946).

¹¹ Id. at 728-29.

One of the recognized exceptions to Washington's strict legal description requirement is reference to the tax parcel number.¹² Specifically, our Supreme Court explored the reference to the tax parcel number exception in Bingham v. Sherfey.¹³

In Bingham, the sole question was whether the legal description in the option to purchase satisfied the statute of frauds.¹⁴ The option described the property as:

Tax No. 3, in Section Thirty-one, in Township Twelve, North, of Range Forty-two, as at present designated on the tax rolls in the office of the County Assessor of said county, being all of that part of the following described tract of land, to wit:

Beginning at a point on the North line of Main Street in the City of Pomeroy, 394 feet East of the West line of Northeast quarter of Southwest quarter of said Section Thirty-one; thence North 5 [degrees] West 325 feet; thence East 198 feet; thence North 937 feet to North line of Southwest quarter of said Section Thirty-one; thence West 96 feet to the county road, thence along the east line of county road South 29 [degrees] West 265 feet; thence South 16 [degrees] 20' West 248 feet; thence South 16 [degrees] 15' West 455 feet; thence South 32' West 357 feet to Main Street, thence East 284 feet to starting point.^[15]

¹² One recognized exception is express incorporation by reference where the document transferring the interest in land "expressly incorporates an attached exhibit." Commentators note that there is "also a branch of incorporation by reference that may be called 'judicial incorporation.'" They conclude description by reference to a tax lot number is one form of such a "judicial incorporation." 18 STOEBUCK AND WEAVER, § 13.3, at 83. Although no case law or other authority appears to acknowledge the "judicial incorporation" classification or taxonomy in this setting.

¹³ 38 Wn.2d 886, 234 P.2d 489 (1951).

¹⁴ Id. at 887.

¹⁵ Id.

Our Supreme Court held that the legal description satisfied the statute of frauds.¹⁶ The court noted that the only information necessary to satisfy the legal description requirement was the first paragraph of the description which stated, "Tax No. 3, . . . as at present designated on the tax rolls in the office of the County Assessor of said county."¹⁷ The court observed that the second paragraph attempting a metes and bounds description, was merely "surplusage."¹⁸ The court reasoned that the description of properties by tax parcel number is "sanctioned by statute,"¹⁹ and case law establishes that in other proceedings, such as tax foreclosure proceedings, the court has accepted legal descriptions by tax parcel number.²⁰

¹⁶ Id. at 889.

¹⁷ Id. at 888.

¹⁸ Id.

¹⁹ Id. ("REM. REV. STAT., §11137 provides: 'The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the plat and description book in numerical order a complete list of all lands or lots subject to taxation, . . . ; provided, that the assessor shall give to each tract of land where described by metes and bounds a number, to be designated as Tax No. ____, which said number shall be placed on the tax-rolls to indicate that certain piece of real property bearing such number, and described by metes and bounds in the plat and description book here in mentioned.'). RCW 84.40.160, the current version of this same statute, continues to require the assessor "give to each tract of land where described by metes and bounds a number, to be designated as Tax No. [____], which said number shall be placed on the tax rolls to indicate that certain piece of real property bearing such number, and described by metes and bounds in the plat and description book herein mentioned."

²⁰ See Turpen, 26 Wn.2d at 728 (our Supreme Court held that the property was sufficiently described by its tax parcel number ("Assessor's Tax Lot No. 22 of Niels Hendrichsen D.L.C.") for the purposes of a tax foreclosure proceeding even though the metes and bounds description was erroneous); City of Centralia v. Miller, 31 Wn.2d 417, 428-30, 197 P.2d 244 (1948) (our Supreme Court held that

And the court upheld the rule from Martin and Turpen that a legal description is sufficient if a person of ordinary intelligence can locate the property without recourse to oral testimony or if it is referenced in another “instrument” that contains a sufficient description.²¹ Therefore, Bingham recognizes “that a reference to this public record [the assessor’s tax parcel number and county] furnishes the legal description of the real property involved with sufficient definiteness and certainty to meet the requirements of the statute of frauds.”²²

Further, in Washington Practice: Real Estate Transactions, Stoebuck and Weaver, in discussing Bingham, recognize that reference to the tax parcel number “in effect” incorporates “the system of recorded instruments of a county auditor.”²³ Specifically, Stoebuck and Weaver note that reference to the tax parcel number “is truly an exception to the strict rule that the description must be found within the four corners of the instrument, for one has to search at least the assessor’s records, and perhaps also the auditor’s, to obtain the legal description.”²⁴ We agree.

Here, the property was identified in the purchase and sale agreement as Tax Parcel No. 27041700100700 (Snohomish County), 6416 180th Street SW

the property was sufficiently described by its tax parcel number, township, and range in Lewis County, Washington for the purposes of a quiet title action).

²¹ Bingham, 38 Wn.2d at 888-89.

²² Id. at 889.

²³ 18 WILLIAM B. STOEBUCK AND JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 13.3, at 83 (2004).

²⁴ Id.

Lynnwood, Washington, 98037.²⁵ It is undisputed that the reference to the tax parcel number in the purchase and sale agreement leads to the “Snohomish County Property Account Summary” located on the Snohomish County tax assessor’s website. The property account summary describes the property as “SEC 17 TWP 27 RGE 04RT-1B-1) N 130FT OF E 190FT OF NW 1/4 NE 1/4 LESS RDS.”²⁶

The reference to the tax parcel number and to Snohomish County in the agreement refers a person of ordinary intelligence to the tax assessor’s records, here, the Snohomish County property account summary, including an abbreviated legal description and a sales history table. And that abbreviated legal description, coupled with the list of documents pertaining to the six most recent sales of the property, refers a person of ordinary intelligence to the Snohomish County auditor’s official records, including the six most recent deeds each containing a complete legal description. Specifically, the deeds describe the property as, “THE NORTH 130 FEET OF THE EAST 190 FEET OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 27 NORTH, RANGE 4 EAST, W.M. IN SNOHOMISH COUNTY, WASHINGTON, EXCEPT THE NORTH 30 FEET AND THE EAST 30 FEET THEREOF, FOR ROAD.”²⁷

²⁵ CP at 128.

²⁶ CP at 74.

²⁷ CP at 111-23.

Therefore, the requirements of Martin and Turpen are satisfied by means of reference to the tax parcel number recognized in Bingham as an exception to the otherwise very strict statute of frauds requirements in Washington. Setayesh's arguments in opposition confuse the law regarding Bingham and its implications.

First, Setayesh argues that Bingham is distinguishable because the option to purchase in Bingham contained an incorporation by reference to the tax parcel number "as at present designated on the tax rolls."²⁸ But the verbiage "as at present designated on the tax rolls" is not a requirement for the reference to the tax parcel number exception approved in Bingham. Simply stating the correct tax parcel number and the county is adequate. We agree with Stoebuck and Weaver's reading of Bingham that a metes and bounds description is not required where the tax parcel number is provided and it is clear what county is involved.

Setayesh also contends that because the legal description in the assessor's records is inconsistent with the legal description in the records on file with the county auditor, the reference to the tax parcel number exception does not satisfy the statute of frauds. Specifically, the Snohomish County property account summary in the assessor's records provides that the property is the "NW 1/4 NE 1/4," which is different from the complete legal description in the auditor's records, which provides that the property is located on the "northeast quarter of the northwest quarter."²⁹

²⁸ Appellant's Br. at 13.

²⁹ CP at 104, 111.

But the assessor's property account summary is not limited to the abbreviated legal description that appears to reverse "NW 1/4" and "NE 1/4."³⁰ Notably, the assessor's property account summary also includes a sales history table that expressly identifies six prior sales dating from 2005 to 2015, listing for each sale the grantor, the grantee, and the recording date of the transfer documents. And, as set forth in detail in the declaration of Ryan Dyer, the documents pertaining to those prior sales are available by entering the tax parcel number in the Snohomish County official records website. Such an official records search lists all of the officially recorded documents pertaining to the property on file with the Snohomish County auditor, including the six most recent deeds corresponding with the six most recent sales listed in the sales history table. And the deeds associated with those transactions contain a complete legal description of the property. Therefore, the discrepancy in the abbreviated legal description contained in the property account summary must be considered in the context of the sales history table included in the assessor's property account summary. And, in turn, the sales history table refers a person of ordinary intelligence to the complete legal description in the deeds associated with that sales history on file with the county auditor.

Setayesh also argues that Teklu cannot rely on the public records to furnish a legal description because they "constitute extrinsic evidence which Martin held

³⁰ CP at 104.

was impermissible.”³¹ But the holding in Martin was more limited. In concluding that a street address alone was insufficient to satisfy the legal description requirement of the statute of frauds, our Supreme Court in Martin noted that a supplemental document containing a legal description does not satisfy the statute of frauds unless it is incorporated because otherwise “parol evidence would have to be resorted to.”³² But the distinction the court made in Martin is not applicable here because, consistent with Bingham, the reference in the purchase and sale agreement to the tax parcel number refers a person of ordinary intelligence to the assessor’s records noted in the property tax summary and in turn to the auditor’s documents containing a complete legal description. Such a reference to the tax parcel number does not implicate parol evidence as the court contemplated in Martin.³³

Finally, we recognize that it is necessary to document in any particular case how the tax parcel number can lead to specific assessor’s records and how, if necessary, those records may in turn refer a person to specific documents in the auditor’s records. Teklu adequately made such a showing here. We also confirm the best practice clearly remains to expressly recite the complete legal description in the agreement purporting to transfer the property or to expressly incorporate by

³¹ Appellant’s Br. 15-19.

³² Martin, 35 Wn.2d at 226-28.

³³ Because we conclude that the inclusion of the tax parcel number judicially incorporated the public records containing a complete legal description into the purchase and sale agreement, we need not address Teklu’s alternative claim for part performance.

reference an attached document containing a complete legal description. But under the right circumstances, a reference to a tax parcel number and county can satisfy the legal description requirement of the statute of frauds.


II. Attorney Fees

Setayesh argues the trial court erred by awarding attorney fees and costs to Teklu. The lease and the purchase and sale agreement both provide for attorney fees and costs to the prevailing party in litigation. Because Teklu prevailed at trial, she was entitled to attorney fees and costs incurred in the trial court.

Therefore, we affirm.



WE CONCUR:





**APPENDIX B – ORDER DENYING MOTION FOR
RECONSIDERATION**


IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

TSIGEREDA TEKLU,)	No. 82649-2-I
)	
Respondent,)	
)	
v.)	
)	
DJAMSHID SETAYESH,)	ORDER DENYING MOTION
)	FOR RECONSIDERATION
Appellant.)	
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Appellant filed a motion for reconsideration of the court's February 28, 2022 opinion. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that the appellant's motion for reconsideration is denied.

FOR THE PANEL:



VANDER WEL, JACOBSON & KIM, PLLC

April 22, 2022 - 3:23 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Tsigereda Teklu, Respondent v. Djamshid Setayesh, Appellant (826492)

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