NO. 310345

COURT OF APPEALS FOR DIVISION III
OF THE STATE OF WASHINGTON

BANK OF NEW YORK, AS TRUSTEE PURSUANT TO THE TERMS OF THAT CERTAIN POOLING AND SERVICING AGREEMENT DATED AS OF NOVEMBER 1, 1996 RELATED TO METROPOLITAN ASSET FUNDING, INC., MORTGAGE PASS-THROUGH CERTIFICATES SERIES 1996-A,

Respondent,

v.

MARCO T. BARBANTI, ROYAL POTTAGE ENTERPRISES; JUNCO FROST LAVINIA, INC.

Appellants.

REPLY BRIEF OF THE APPELLANT MARCO T. BARBANTI

TIMOTHY W. DURKOP, ESQ.
WSBA # 22985
2906 N. Argonne
Spokane, WA 99212
(509) 928-3848
Attorney for the Appellant Barbanti

TABLE OF CONTENTS

I. SUMMARY OF ARGUMENT. 1

II. THE TRIAL COURT'S DECISION IS CONTRARY TO THE WELL ESTABLISHED PRINCIPLES THAT GOVERN SUMMARY JUDGMENTS. 2

III. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT THE RELIEF SOUGHT IN THE SUMMARY JUDGMENT MOTION. 6

A. A DISPUTE OF MATERIAL FACT EXISTS REGARDING WHETHER THE DEED AND SELLER'S ASSIGNMENT GAVE BANK OF NEW YORK STANDING TO ENFORCE THE PROVISIONS OF THE HOOPER-BARBANTI CONTRACT. 9

B. THE TRIAL COURT'S FAILURE TO COMPLY WITH RCW 7.28.230(1) DEPRIVES THE COURT OF SUBJECT MATTER JURISDICTION IN THIS CASE. 14

APPEAL 21

V. JOINDER AND CONCLUSION. 21

TABLE OF AUTHORITIES

CASES

Barrie v. Hosts of Am., Inc., 94 Wn.2d 640, 642, 618 P.2d 96 (1980) . . 2

Benjamin v. Washington State Bar Association, 138 Wn.2d 506, 515, 980 P.2d 742 (1999) 3

Clements v. Travelers Indemnity Co., 121 Wn.2d 243, 249, 850 P.2d 1298 (1993) 3

Freeborn v. Seattle Trust, 94 Wn.2d 336, 340, 617 P.2d 424 (1980) . 16, 17

Graves v. P. J. Taggares Co., 94 Wn.2d 298, 616 P.2d 1223 (1980) . . 4

Hisle v. Todd Pac. Shipyards, 151 Wn.2d 853, 861, 93 P.3d 108 (2004) 2

Howard v. Edgren, 62 Wn.2d 884, 885, 385 P.2d 41 (1963) 21

Kofmehl v. Steelman, 80 Wn. App. 279, 282-3, 908 P.2d 391 (Div. III, 1996) 16, 17

Magart v. Pierce, 35 Wn. App. 264, 267, 666 P.2d 386 (Div. III, 1983) 20

Magula v. Benton Franklin Title Co., 131 Wn.2d 171, 182, 930 P.2d 307 (1997) 3

Securities and Investment Corp. v. Horse Heaven Heights, 132 Wn. App. 188, 195, 130 P.3d 880 (Div. III, 2006) 19

Skagit Surveyors & Engineers, LLC v. Friends of Skagit County, 135 Wn.2d 542, 556-7, 958 P.2d 962 (1998) 13

Spokane Airports v. RMA, Inc., 149 Wn. App. 930, 939-44, 206 P.3d 364 (Div. III, 2009) 13

Trimble v. Washington State University, 140 Wn.2d 88, 93, 993 P.2d 259 (2000) 3

Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982) 8

Womach v. Harding, 132 Wash. 184, 187, 231 Pac.949 (1925) 21

Young v. Key Pharm., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989) 3

STATUTES

RCW 7.28.010 17-20

RCW 7.28.230(1) 7, 8, 14-17, 20

RULES OF CIVIL PROCEDURE

RAP 18.1 21

RAP 2.5 (a) 12, 13, 15

I. SUMMARY OF ARGUMENT.

The Respondent's Brief suffers from two fatal defects: first it is wrong on the law governing review of a summary judgment; and second it is wrong on the law governing quiet title actions. Both of Bank of New York's errors arise because it misunderstands the legal principles that underlie and govern a real estate contract in Washington.

Bank of New York's brief fails to address the material facts that must be undisputed in order for a court to grant summary judgment. Therefore the summary judgment in this case must be reversed. Had Bank of New York, and also the trial court, properly identified the facts material to quieting title, the evidence in the record demonstrated that those material facts were disputed.

When the trial court got off track and ignored the law that mandates that a foreclosure precede the quiet title remedy, the summary judgment became nonsensical and consequently Bank of New York's defense of the summary judgment makes

no legal sense. Had the well established principles of real estate contract law been applied in this case, not only would Bank of New York's summary judgment motion been denied but the trial court would also have granted summary judgment in favor of the Defendants (Petitioners) dismissing this case because the release and recording of the Fulfillment Deed merges the contract into the Deed thereby leaving no real estate contract to enforce.

II. THE TRIAL COURT'S DECISION IS CONTRARY TO THE WELL ESTABLISHED PRINCIPLES THAT GOVERN SUMMARY JUDGMENTS.

Bank of New York's summary judgment motion was a non-starter since its inception because Bank of New York failed to satisfy the moving party's burden in a summary judgment. Summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Hisle v. Todd Pac. Shipyards*, 151 Wn.2d 853, 861, 93 P.3d 108 (2004). A material fact is one upon which the outcome of the litigation depends, in whole or in part. *Barrie v.*

Hosts of Am., Inc., 94 Wn.2d 640, 642, 618 P.2d 96 (1980).

The standard of review of a summary judgment decision before the Court of Appeals is de novo. The Appellate Court engages in the same inquiry as the trial court. *Benjamin v. Washington State Bar Association*, 138 Wn.2d 506, 515, 980 P.2d 742 (1999). All facts submitted **and all reasonable inferences** from them are to be considered in the light most favorable to the nonmoving party. *Trimble v. Washington State University*, 140 Wn.2d 88, 93, 993 P.2d 259 (2000). The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion. *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993) (Citations omitted).

In a summary judgment motion, the moving party bears the burden of demonstrating an absence of any genuine issue of material fact and entitlement to judgment as a matter of law. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Thereafter, the nonmoving party must set forth specific facts evidencing a genuine issue of material fact. *Magula v.*

Benton Franklin Title Co., 131 Wn.2d 171, 182, 930 P.2d 307 (1997).

Bank of New York's summary judgment motion sought relief for the alleged payment default under the Hooper-Barbanti contract by Mr. Barbanti. The recently filed Respondent's Brief, continues to assert that "**Mr. Barbanti Failed to Pay the Purchase Price Under the Real Estate Contract.**" *See Respondent's Brief*, p. 13 *et seq.* (Emphasis in original). Despite all the thunder about Mr. Barbanti's alleged failure to make payments, Bank of New York has yet to prove how much Mr. Barbanti allegedly owes in order to cure the default.

"How much do(es) the "deadbeat" defendant(s) owe?" is the quintessential material fact in a summary judgment motion that seeks relief for alleged default in making contract payments. When the moving party fails to meet its initial burden, summary judgment must be denied regardless of whether the non-moving party has submitted affidavits, declarations or other material in response. *Graves v. P. J. Taggares Co.*, 94 Wn.2d 298, 616 P.2d

1223 (1980). In *Lobak Partitions, Inc., v. Atlas Construction Company, Inc.*, 50 Wn. App. 493, 504, 749 P.2d 716 (Div. I, 1988), a breach of contract law suit, the Court of Appeals concluded that questions regarding delays in performance caused by errors committed by the others created triable issues of fact relevant to offsets or defenses to the amount allegedly owed under the contract.

In this case Bank of New York moved for summary judgment to foreclose the Hooper-Barbanti contract and quiet title on the grounds that Mr. Barbanti failed to make some payments under the contract. However Bank of New York never proved the amount of the alleged default. Bank of New York didn't meet its initial burden as moving party. Nevertheless Mr. Barbanti, in his Declaration filed in response to the summary judgment, provided copies of records showing all the contract payments he made after the Hooper assignment was executed and a copy of the

Fulfillment Deed because the contract had been fully paid.[1] These records created a dispute of a material fact and warrant denying the summary judgment. See Declaration of Marco T. Barbanti (hereinafter "Barbanti Declaration"), Exhibits M, N, O, and P (CP 156-309). More important the evidence submitted by Mr. Barbanti demonstrates that Bank of New York has no standing in this case and as a result the court had no subject matter jurisdiction to hear or decide this matter.

III. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO GRANT THE RELIEF SOUGHT IN THE SUMMARY JUDGMENT MOTION.

The Appellants presented two arguments to the trial court

---

[1] The Hooper-Barbanti contract provided for two payments: one to reimburse Hooper for their obligation under a promissory note payable to Bank of New York (pass-thru payment); and one payment that went directly to Hooper. Mr. Barbanti's response to the summary judgment motion included a detailed legal and factual discussion of the doctrines of *res judicata* and collateral estoppel to establish that Hooper (now Bank of New York) was barred from collecting the "pass thru" payment as a result of the decision by Judge Cozza in the first lawsuit between the parties which concluded that the promissory note was unenforceable and its related deed of trust was reconveyed. See Defendants' Memorandum in Opposition, pp. 21-32 (CP 121-155). The res judicata collateral estoppel arguments present an array of **triable** facts that require denial of the summary judgment.

that in effect challenged the court's subject matter jurisdiction to grant the relief sought in Bank of New York's complaint and summary judgment motion. After the trial court went rogue and put the "quiet title cart" before the "foreclosure horse" and entered an order that is procedurally and substantively baseless, the Appellants presented an Assignment of Error that specifically dealt with the unpredictable and obviously erroneous act by the trial court.[2] *See Assignment of Error No. 3, Joint Brief of Appellants,* p.1.

As a result two of the Appellants four Assignments of Error present issues which are not only significant because they undercut the legal basis for the trial court's decision, but also because these issues directly challenge the trial court's subject

---

[2] Litigants can only prepare for that which is foreseeable when they go to court. In this case the record contains ample proof that the Appellants presented every reasonable defense in opposition to the summary judgment motion seeking to foreclose the Hooper-Barbanti contract judicially. However no one could have foreseen that the trial court would, on its own, ignore the Defendants' arguments and grant the remedy of quieting title **without first** ordering a foreclosure sale in direct violation of *RCW 7.28.230(1).*

matter jurisdiction in this case. The same subject matter jurisdiction problem is presented before this Court because on review of an order granting summary judgment the appellate court must engage in the same inquiry as the trial court. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

In its Brief, Bank of New York questions the timeliness of the Appellants' challenge to the sufficiency of the Deed and Seller's Assignment of Real Estate Contract and the propriety of the Appellants' argument calling for reversal of the trial court's decision because the decision is prohibited by statute, *RCW 7.28.230(1)*.

Apparently Bank of New York did not apprehend the significance of the argument challenging the validity of the Deed and Seller's Assignment to the court's subject matter jurisdiction nor did Bank of New York comprehend the impact that the violation of *RCW 7.28.230(1)* has to the entire case. Finally Bank of New York fails to understand the legal implications arising from the release of the Hooper-Barbanti contract as "PAID IN

FULL" and the delivery and recording of the Fulfillment Deed for the contract. Each one of these issues independently eliminates Bank of New York's standing in this case and consequently deprives the trial court of subject matter jurisdiction and requires that this case be dismissed.

A. A DISPUTE OF MATERIAL FACT EXISTS REGARDING WHETHER THE DEED AND SELLER'S ASSIGNMENT GAVE BANK OF NEW YORK STANDING TO ENFORCE THE PROVISIONS OF THE HOOPER-BARBANTI CONTRACT.

Bank of New York claims that the Appellants have raised the standing issue for the first time in this Appeal. That claim is both incorrect and irrelevant. The legality and the effect of the Deed and Seller's Assignment executed by Hooper in favor of Bank of New York was first raised by the Appellants in their Memorandum in Opposition to Plaintiff's Summary Judgment Motion pp. 32-4. (CP 121-155). The escrow company records attached to the Barbanti Declaration (CP 156-309) showed that **all** contract payments made by Mr. Barbanti to the Hooper escrow

account including the final contract payoff were disbursed to Hooper even though Hooper had previously executed an *alleged assignment* in favor of Bank of New York.

While Hooper was cashing the checks that were coming from Mr. Barbanti, Hooper's assignee, Bank of New York, was claiming in its summary judgment motion that Mr. Barbanti had not made payments since the assignment from Hooper had been executed and recorded. This patently obvious factual dispute means that summary judgment must be denied.

The facts in the record established that Hooper had signed a document entitled "Deed and Seller's Assignment of Real Estate Contract" and that, despite the language contained in the Assignment signed by Hooper, over $17,000.00 in contract payments made by Mr. Barbanti after the Assignment was executed and recorded were disbursed to Hooper. *Barbanti Declaration*, ¶ 22-27, Exhibits M, N, O, and P (CP156-309). The evidence submitted by Mr. Barbanti contained a copy of the entire disbursement log from the escrow company designated in the

contract showing that all payments made by Mr. Barbanti, after the Hooper assignment was executed, were **disbursed to and cashed by Hooper**. *Barbanti Declaration*, ¶ 22-27, Exhibits M, N, O, and P (CP156-309). The evidence submitted by Mr. Barbanti to the record also contained a copy of one of the disbursement checks from the escrow company designated in the contract payable to Hooper. *Barbanti Declaration*, ¶ 22-27, Exhibits M, N, O, and P (CP156-309).

One must presume that Hooper understood the meaning of the Assignment they executed. One must presume that Hooper understood what they were doing when they cashed over $17,000.00 in disbursement checks for payments under a Real estate contract they had supposedly assigned to Bank of New York. One must also presume that Bank of New York either knows or has advisors who know how to properly draft, record and perfect a contract assignment such that whatever right(s) Bank of New York acquired from Hooper were properly

transferred. Neither this Court, nor the trial court, nor the Appellants have any duty or obligation to chaperone the encounters between Bank of New York and Hooper. Based upon the existence of these facts in the record at summary judgment, the trial court was required to deny the motion. Now that same duty falls upon this Court because review of a summary judgment is *de novo* and this Court reviews the same record that was before the trial court.

The facts the trial court had before it in the record showing Mr. Barbanti's payments being received by Hooper and not Hooper's assignee also raise the more important issue that Bank of New York is not entitled to receive contract payments. That issue goes directly to whether Bank of New York has standing to sue for any relief for an alleged default in making contract payments. The standing issue was properly included in the Appellants' Assignments of Error in this case.

RAP 2.5 (a) provides, and this Court has held, that whether a party has standing to sue and whether a court has subject matter

jurisdiction to hear a claim are issues that may be raised for the first time on appeal. *Spokane Airports v. RMA, Inc.*, 149 Wn. App. 930, 939-44, 206 P.3d 364 (Div. III, 2009) (citing: *RAP* 2.5(a); and *Skagit Surveyors & Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556-7, 958 P.2d 962 (1998) when a petitioner lacks standing, the court is without subject matter jurisdiction to entertain the claim). Bank of New York's asserted status as owner of the right to enforce payments under the Hooper-Barbanti contract is directly contradicted by evidence from the escrow company designated by the parties to the Hooper-Barbanti contract. The trial court erred when, in the context of ruling on a summary judgment motion, it ignored a factual dispute that was directly pertinent to its subject matter jurisdiction to hear this case. This issue alone demands reversal of the trial court's order.[3]

---

[3] On page 6 of its Brief, Bank of New York asserts that Appellants admit the standing argument is moot. That reference is taken out of context and is also wrong. RAP 2.5(a) and the cases cited herein demonstrate that standing is relevant and may be raised at any time because it goes to the

B. THE TRIAL COURT'S FAILURE TO COMPLY WITH RCW 7.28.230(1) DEPRIVES THE COURT OF SUBJECT MATTER JURISDICTION IN THIS CASE.

The Summary Judgment Order quiets title in favor of Bank of New York, extinguishes any and all interest that Mr. Barbanti or anyone claiming by through or under him had in the subject property and gives Bank of New York the right to possession of the subject property. Based on the facts and the procedural posture of the case at the time (summary judgment motion), the trial court had no authority to grant the relief contained in the Order.

In their Joint Brief the Appellants argued that RCW Chapter 7.28 governs the remedies of quiet title and ejectment and that the trial court's Order violates the statute and should be reversed. Bank of New York makes two arguments in response.

---

question of whether the court has jurisdiction over the subject matter. No party can confer standing on another by admission. The "moot" comment in the Defendants'/Appellants' Brief was at the end of the argument that this lawsuit must be dismissed because the Fulfillment Deed was released and recorded. A lawsuit can only be dismissed once. Bank of New York is welcome to "pick its poison" but at the end of the day it still loses.

First it asserts that the provisions of RCW Chapter 7.28 were not raised before the trial court and therefore cannot be raised for the first time on appeal. *Respondent's Brief*, pp. 10-11. Second Bank of New York argues that its status as assignee of a contract vendor is different than that of a "mortgagee" which is the term used in *RCW 7.28.230(1)*. Both arguments are wrong on the law.

With regard to this issue being argued for the first time before the Court of Appeals, Section III. A. of this Brief disposed of that argument. In short RAP 2.5(a) and decisional law, allow challenges to a party's standing to seek relief and to a court's subject matter jurisdiction to be raised at any time.

Bank of New York's argument that its status as assignee of a contract vendor is different than a mortgagee, and thus the statutory requirements in RCW 7.28.230(1) do not apply to it, is not only wrong but also proves that Bank of New York misunderstands the law governing real estate contracts in

Washington.[4] Before entering into a discussion of applicable Washington law, it should be noted that nowhere in Bank of New York's Brief does it provide any authority to substantiate its claim that a real estate contract vendor is not the same as a "mortgagee" for purposes of applying RCW 7.28.230(1). The reason for this omission is simple: Washington law expressly contradicts Bank of New York's assertions.

Despite a rocky start, the now well established law in Washington holds that a real estate contract purchaser's interest is real property and the contract vendor's interest is personal property (namely the right to receive payments). *Freeborn v. Seattle Trust*, 94 Wn.2d 336, 340, 617 P.2d 424 (1980). This Court has held that a real estate contract vendor has a lien-type security interest. *Kofmehl v. Steelman*, 80 Wn. App. 279, 282-3,

---

4

Bank of New York's misunderstanding of real estate contracts in Washington plagues the entirety of the Respondent's Brief and results in Bank of New York advancing arguments that are either irrelevant to this case or inapplicable to this case or both. The Court's attention is also directed to the Reply Brief submitted by Appellant Junco Frost Lavinia, Inc. which provides a thorough historical summary of the law.

908 P.2d 391 (Div. III, 1996). In *Kofmehl* this Court quoted with approval Judge Rossmeissl's opinion from *In re McDaniel*, 89 B.R. 861(Bankr. E.D. Wash. 1988) wherein he explains that a real estate contract vendor's interest is like a mortgage:

> "Washington treats the seller's interest under a real estate installment sales contract as a lien/mortgage-type security interest in real property....The remedies provided to the seller in the case of a breach or nonperformance are those of a secured creditor."

Kofmehl supra at pp. 282-3.

Bottom line: a real estate contract vendor's interest is a lien on the subject property like a mortgage. Therefore a contract vendor has no standing to quiet title to the subject property under *RCW 7.28.010* or *RCW 7.28.230(1)* and the court has no jurisdiction to act upon a quiet title request made by a contract vendor.

The contract vendor's interest in the subject property has effectively been deemed a personal property interest even though the contract vendor technically retains "title" to the property. *Freeborn v. Seattle Trust*, 94 Wn.2d 336, 617 P.2d 424 (1980). Bank of New York's assertion that a real estate contract vendor's

interest is different than that of a mortgagee is simply wrong.

Paragraph 6 of the Hooper-Barbanti contract specifically conveys the right to possession of the subject property to Mr. Barbanti as contract purchaser. *Barbanti Declaration*, Exhibit B, p. 6. (CP156-309). By virtue of the Quit Claim Deed executed by Mr. Barbanti, Appellant Royal Pottage now has Mr. Barbanti's interest in the subject property. *Barbanti Declaration*, ¶ 4, Exhibit H (CP156-309). *RCW 7.28.010* defines the requirements for a party to have standing to bring a quiet title action and states in pertinent part:

> "Any person having a valid and subsisting interest in real property, **and a right to possession thereof**...." (Emphasis added).

The Hooper-Barbanti contract gives the **right** to possess the subject property to the contract purchaser and the Washington State Supreme Court has held that the contract vendor has no real property interest. *RCW 7.28.010* provides an exhaustive list of the persons who have the right to bring quiet title actions and the

requirements before they may commence a quiet title action.

The text of *RCW 7.28.010* is too long to reproduce in its entirety here however a copy of that section of the law is attached in the Appendix to this Brief to show that nowhere in the law has the legislature conferred standing on a contract vendor or mortgagee to bring a quiet title action until after foreclosure.

This Court has held that the provisions of RCW 7.28.010 establish the threshold requirements for a quiet title action that a Plaintiff must meet in order to prove standing to request the quiet title remedy:

> "RCW 7.28.010 requires that a person seeking to quiet title establish a valid and subsisting interest in property and a right to possession thereof....The requirement to prove some claim of ownership is also necessary under CR 17(a) in order to establish **standing** as a real party in interest....A party seeking to quiet title must succeed on the strength of its own title and cannot prevail based on the weakness of the other party's title." (Emphasis added) (Citations omitted).

Securities and Investment Corp. v. Horse Heaven Heights, 132 Wn. App. 188, 195, 130 P.3d 880 (Div. III, 2006).

At no time relevant to the adjudication of the quiet title request did

Bank of New York have a right of possession in the subject property. Therefore Bank of New York has no standing in this case as required under *RCW 7.28.010* and *RCW 7.28.230(1)* and this action must be dismissed just as this Court did in *Magart v. Pierce*, 35 Wn. App. 264, 267, 666 P.2d 386 (Div. III, 1983) when the plaintiff in *Magart* failed to satisfy the standing requirements of the statute and the Civil Rules.

RCW 7.28.230(1) **prohibits** a mortgagee (secured party) from maintaining a quiet title or ejectment action until after a foreclosure and sale according to the law. Specifically *RCW 7.28.230(1)* states in pertinent part:

> "A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, **without a foreclosure and sale according to the law**...." (Emphasis added).

A mortgagor does not lose his right to the possession of mortgaged real property by failing to make payment on the mortgage, nor does a mortgagee have any right to possession of mortgaged real

property without a foreclosure and sale according to law. *Howard v. Edgren*, 62 Wn.2d 884, 885, 385 P.2d 41 (1963). A quiet title action cannot be used as a substitute for a foreclosure. *Womach v. Harding*, 132 Wash. 184, 187, 231 Pac.949 (1925). It is unnecessary to repeat the argument made in the Joint Brief of the Appellants because with the exception of arguing that a contract vendor is somehow different than a mortgagee, Bank of New York concedes the applicability of RCW Chapter 7.28.

IV. THE APPELLANTS ARE ENTITLED TO FEES ON APPEAL.

Based on the attorney fee clause, found in Paragraph 23 of the Hooper-Barbanti contract, the Appellants are entitled to attorney fees for this proceeding. Appellants request fees consistent with the provisions of RAP 18.1.

V. JOINDER AND CONCLUSION.

The Summary Judgment Order in this case is a nullity. Mr. Barbanti joins in and ratifies the arguments presented by Appellants Royal Pottage Enterprises, Inc., and Junco Frost

Lavinia, Inc. in their respective Reply Briefs without repeating the same here. Mr. Barbanti respectfully requests that this Court dismiss this lawsuit because Bank of New York lacks standing to prosecute this matter.

Respectfully Submitted, on
January 29, 2013.

Timothy W. Durkop
Attorney for Appellant
Marco T. Barbanti

APPENDIX A

RCW 7.28.010
Who may maintain actions — Service on nonresident defendant.

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his or her unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his or her grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court.

[2011 c 336 § 170; 1911 c 83 § 1; 1890 c 72 § 1; Code 1881 § 536; 1879 p 134 § 1; 1877 p 112 § 540; 1869 p 128 § 488; 1854 p 205 § 398; RRS § 785. Formerly RCW 7.28.010, 7.28.020, 7.28.030, and 7.28.040.]

Notes:

Process, publication, etc.: Chapter 4.28 RCW.

Publication of legal notices: Chapter 65.16 RCW.