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No. 69827-3-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

HUGH K. SISLEY and MARTHA E. SISLEY
both individually and on behalf of their marital community,

Appellants/Cross-Respondents,

vs.

CITY OF SEATTLE, a municipal corporation,

Respondent/Cross-Appellant.

CITY OF SEATTLE'S RESPONSE BRIEF

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I. INTRODUCTION

Hugh and Martha Sisley ("the Sisleys") own about fifty rental properties in the Roosevelt neighborhood.[1] City of Seattle ("City") code enforcement records show that since 1980, the City opened 420 housing and zoning enforcement cases against the Sisleys. 395 of the 420 cases were opened in response to tenant or neighbor complaints about the conditions of the Sisley rental houses.[2]

The two Housing and Building Maintenance Code ("housing code") Notices of Violation ("NOVs") and related judgments underlying the case before this Court included life-threatening violations:[3]

- An unsound chimney, rotted stairs, missing and rotted railings, no deadbolt or adequate lock on front doors, and exposed and hazardous wiring; and
- No permanent heat source, lack of smoke detectors, unsafe windows, holes in ceilings and walls, a taped extension cord providing electricity to a living unit, improper and exposed wiring, and lack of light and ventilation in a bathroom.

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[1] Clerk's Papers ("CP 466"), Declaration of Patrick Downs, Exhibit 42, Deposition of Hugh Sisley at 11:13-16.

[2] CP 159-160, Declaration of Jill Vanneman in support of summary judgment.

[3] CP 1389-1393, NOV for 6515 house; CP 1401-1405, NOV for 6317 house.

The Sisleys appealed the judgments entered against them as a result of their failure to correct the violations. This Court upheld the two judgments and the Supreme Court denied review of the judgments. In the Supreme Court's decision denying review, the Court stated "the evidence showed multiple serious and uncorrected violations, some of which endangered tenants' lives."[4]

After the judgments were imposed, the Sisleys filed this lawsuit. Their strategy was to:

- Reduce the judgments by claiming Anthony Narancic who manages Sisley properties timely completed the housing repairs as required by the NOVs; and
- Sue the City for enforcing its housing code and providing power and water to their rental houses as leverage against the judgments.

Their claims were dismissed on summary judgment except for two that went to trial:

- Whether the Sisleys brought the houses that were the subject of the judgments into compliance tolling penalties; and
- Whether the City improperly sought payment from the Sisleys for rental house power bills.

[4] CP at 528.

The jury decided for the City on these two claims.

The Sisleys are not challenging the trial outcome on these two claims and they are not on appeal. Instead, the Sisleys are challenging the following claims decided for the City on summary judgment:

- State-constitutional-violation tort claims. The claims were dismissed because they are not actionable under Washington law when "augmentative legislation" has not been enacted.
- Code-enforcement-related tort claims. The claims were dismissed because claims arising from the City issuing tenant-relocation-assistance NOVs, and vacant-building-monitoring fees, both governmental-code-enforcement activities, are barred by the public duty doctrine.
- A claim the City improperly supplied water to an occupied Sisley rental house. The court dismissed this claim because the Sisleys had a legal duty to secure the property against entry from "squatters" the Sisleys claim moved into the house; and once individuals were living in the house by permission or not, the Sisleys were obligated by state and City law to provide water.
- A tortious interference claim. This claim was dismissed because the Sisleys' rental activities do not outweigh the City's interest in enforcing its land use regulations for the benefit of

tenants and the public; and the Sisleys failed to establish the elements of the claim.

Finally, the court properly determined the City's issuance of a certificate of release after the Sisleys demolished the house at 6317 15th Avenue N.E did not release accumulated civil penalties when:

- The certificate only released the property from the NOV that required the violations be corrected and did not release the judgment entered against the Sisleys for their failure to correct the violations.

II. STATEMENT OF THE CASE

A. The City has opened hundreds of enforcement cases and filed dozens of actions resulting from the Sisleys' disregard for the safety of their tenants.

The 420 enforcement cases opened against the Sisleys were an appropriate response to tenant and neighbor complaints. Pictures of a few violations and the unsafe housing conditions are found in the Clerk's papers at pages 155-158.

In nearly every case the Sisleys appealed, the Hearing Examiner or Seattle Municipal Court upheld the City's actions. Of the cases brought in

Municipal Court, 49 out of 58 resulted in the Sisleys correcting the violation or a judgment being entered against them.[5]

In response to the fact that the City opening 420 housing and zoning violation cases as a result of tenant and neighbor complaints, the Sisleys assert "nearly three out of four — literally hundreds of its investigations, no violation was found to exist."[6] The record does not support their assertion. The record shows that in cases brought to the Hearing Examiner or Municipal Court, the City prevailed. The fact that not all notices or inspections resulted in a Hearing Examiner or Municipal Court decision does not mean violations were not found in the rest of the enforcement cases. To the contrary, it was rare that a violation was not found.

B. The City is awarded large civil penalty judgments in two housing code enforcement cases.

One of the issues the Sisleys raise on appeal is whether the civil penalties awarded by the Municipal Court in the two cases discussed above are excessive. The penalties were awarded because of the Sisleys' failure to correct the housing code violations described below.

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[5] CP 159-160, Declaration of Jill Vanneman.

[6] Appellants/Cross Respondents Sisley's Amended Opening Brief ("Amended Opening Brief") at 4.

1. The 6515 house that has never been in compliance.

In March 2008, after receiving a tenant complaint, the Department of Planning and Development ("Department") issued a NOV to the Sisleys for housing code violations at 6515 16th Avenue N.E (the "6515 house").[7] The NOV required the Sisleys correct **17** housing code violations.[8] The NOV explained that the Sisleys had to notify the Department when the corrections were completed and request an inspection.[9] The NOV also required the violations be corrected by a set date and explained a failure to correct the violations may result in penalties.[10]

The Sisleys did not bring the house into compliance before the Municipal Court judgment was entered.[11] And the jury determined at trial that the Sisleys have still not brought the house into compliance.[12]

2. The 6317 house that has never been in compliance and was instead demolished.

In June 2008, after receiving another tenant complaint, the Department issued a NOV to the Sisleys for housing code violations at 6317

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[7] CP 234-239, *City of Seattle v. Sisley*, Seattle Municipal Court Civil Case No. 08-100, City's Ex. 6.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] CP 234-239, *City of Seattle v. Sisley*, Seattle Municipal Court Civil Case No. 08-100, Judgment 3:8-9.

[12] CP 2142; CP 2157.

15th Avenue N.E (the "6317 house").[13] This time the NOV required the Sisleys correct **26** housing code violations.[14] The NOV also explained that the Sisleys must notify the Department when the corrections had been completed and request an inspection.[15] Just as with the 6515 house, this NOV required the violations be corrected by a set date and explained a failure to correct the violations may result in penalties.[16]

The Sisleys did not bring the property into compliance before the Municipal Court judgment was entered.[17] And the jury determined the Sisleys did not bring the property into compliance prior to August 2012 when the Department issued the certificate of release after the house was demolished.[18]

3. The civil penalties in these two cases have been upheld by this Court and review denied by the Washington State Supreme Court.

After the Municipal Court trials on the 6515 and 6317 house violations, the judgments were appealed to King County Superior Court and consolidated for review. During the RALJ appeal, the Sisleys moved for an

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[13] CP 240-245, *City of Seattle v. Sisley*, Seattle Municipal Court Civil Case No. 09-024, City's Ex. 6.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] CP 242, *City of Seattle v. Sisley*, Seattle Municipal Court Civil Case No. 09-024, Judgment 3:1-2.

[18] CP 2142; CP 2157

order requesting Certificates of Compliance.[19] The Superior court declined to order the certificates be issued and instead remanded the cases to the Municipal Court to reinstate judgments up to $75,000.[20] The Narancic declarations considered in the RALJ appeal are the same declarations the jury considered in this case before concluding the Sisleys had not brought the two properties into compliance.

The Superior Court RALJ decision was appealed by the City to this Court that affirmed the decision except for reversing the $75,000 penalty limitation and directing reinstatement of the full judgments.[21] The Washington State Supreme Court declined the Sisleys' petition for review including their argument the penalties were excessive.[22]

C. The City appropriately sought vacant building monitoring fees and issued tenant relocation assistance orders.

1. The housing code requires vacant houses open to entry be subject to monitoring fees.

In October 2006, the City issued a Director's complaint that the house at 6418 Brooklyn Avenue N.E. ("the Brooklyn house") was unfit for habitation.[23] The City also determined the house was open to entry and sent the Sisleys a

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[19] CP 4.

[20] CP 514.

[21] CP 511-523, *City of Seattle v. Sisley*, Court of Appeals No. 65226-5-1 Order on Petitions for Discretionary Review (2010).

[22] CP at 511-529.

[23] CP 261.

letter stating that because the house was open, it was being placed on vacant building monitoring status and charged monitoring fees as the code provides.[24] The Sisleys objected, arguing the house was not ordered closed by the Director.

The City then filed a Municipal Court case to abate the same house when the Sisleys failed to repair the Brooklyn house. Ten months later, the Sisleys answered and counterclaimed the City improperly assessed vacant building monitoring fees and they had been damaged by the fees. Nearly a year later, the Sisleys entered into a stipulated judgment where the Sisleys would repair or demolish the Brooklyn house and the judgment would be a "final resolution of the unfit building case."[25]

In a separate matter, in March 2008, the City issued a Director's complaint that the house at 1322 Northeast 65th Street ("the 1322 house") was unfit.[26] The Sisleys stipulated to repairing or demolishing the house in the same stipulated judgment entered in the Brooklyn house case. Eventually, the Sisleys demolished the Brooklyn and 1322 houses.[27]

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[24] CP 276.

[25] CP 254-257.

[26] CP 258.

[27] CP 206-207, Declaration of Patrick Downs at 2:3-3:15. There are two properties in the record, 6418 Brooklyn Avenue N.E. and 1322 N.E. 65th Street that were subject to vacant building monitoring fees. *See* CP 250-318; CP 818-842.

In November 2011, Jill Vanneman, a Department of Planning and Development employee,[28] erroneously determined that City code required a notice of violation or Director's order be issued before vacant building monitoring fees could be sought.[29] Based on this determination, the City wrote the Sisleys telling them the monitoring fees for the Brooklyn house would be reversed. In February 2012, the City told the Sisleys the monitoring fees for the Brooklyn and 1322 houses would be waived. The City issued credit invoices to the Sisleys indicating the monitoring fees had been reversed.[30] The Sisleys never paid the $604 in vacant building monitoring fees.[31]

2. The City appropriately sought tenant relocation assistance fees.

The Sisleys have over the years entered into agreements with individuals they call "tenants" to manage their rental houses.[32] These "tenants", including Anthony Narancic who lives in his personal West Seattle home,[33] have failed to

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[28] The Sisleys describe Jill Vanneman as "the City's lawyer responsible for administering the VBM program." Appellants/Cross Respondents Sisley's Amended Opening Brief at 15. Although Ms. Vanneman is an attorney, she is not employed by the City's Law Department and is not responsible for administering the VBM program. Instead, she is a Code Compliance Coordinator for the Department of Planning and Development. *See* CP 1151.

[29] CP 159-160, Declaration of Jill Vanneman.

[30] CP 207-208, Declaration of Patrick Downs at 3:15-4:9.

[31] CP 476, Declaration of Patrick Downs, Exhibit 42, Deposition of Hugh Sisley at 91:3-6.

[32] CP 467, Deposition of Hugh Sisley (Keith Gilbert a "tenant" in 10 houses); CP 467-468 (Sisleys' daughter is a "tenant" in 10 houses); CP 469 (Anthony Narancic a "tenant" in 10 houses).

[33] Verbatim Transcript of Proceedings, November 2, 2012 at 66:14-17.

pay thousands of dollars in power bills,[34] and because of lack of payment the City has disconnected power to the houses.

After the power was disconnected, the City issued Emergency Orders requiring the Sisleys reconnect the power for their tenants as required by state law and City code.[35] Besides houses without power, Sisley houses had no functional heat systems or water supply, defective plumbing and wiring, broken windows and missing smoke detectors, holes in the floors and walls, and ants and cockroaches.[36]

Following the housing code violations that rendered the houses unfit for occupancy, the City ordered the Sisleys pay to their tenants — "guests" as the Sisleys call the people who pay rent monthly, have keys and access to common areas, and live in the houses[37] — tenant relocation assistance, money allowing a tenant living in unsafe housing to relocate.[38] In response, the Sisleys argued Mr.

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[34] CP 475, Deposition of Hugh Sisley (Keith Gilbert responsible for power bills for 7 Sisley houses); CP 482-488, Deposition of Hugh Sisley (unpaid power bills from 7 Gilbert-managed houses totaling $15,486.43); CP 489-491, Deposition of Hugh Sisley (Narancic responsible for $12,625.94 in unpaid power bills).

[35] CP 1419-1420. *See also* RCW 59.18.060(10); SMC 22.206.160.A; SMC 22.206.050.F.

[36] CP 208, Declaration of Patrick Downs at 4:10-4:16

[37] CP 497, Declaration of Patrick Downs, Exhibit 44, Deposition of Anthony Narancic at 25:17-24.

[38] Seattle Municipal Code (SMC) Chapter 22.210.

Narancic was the "tenant" and the Sisleys had no control over the circumstances that led to the Emergency Orders.[39]

Although the City filed four cases against the Sisleys in Municipal Court for failing to pay tenant relocation assistance, the City exercised prosecutorial discretion and dismissed three of the cases. The City carried one case forward that has been upheld by the Municipal and Superior courts, with review denied by this Court.[40] The Sisleys never paid relocation assistance fees.[41]

D. After rental house power bills are not paid, City Light sought payment from the Sisleys. The Sisleys appealed, and the City Light Hearing Officer determined the Sisleys were not responsible for the bills.

As described above, the power bills for the Sisley rental houses were consistently unpaid. In February 2005, the Sisleys received invoices from City Light for $15,486.43 in unpaid power bills from their rental houses.[42] After receiving these bills, Mr. Sisley wrote City Light and claimed "the tenant at this address is known to you" and disputed the bills were owed. There is nothing in the record indicating City Light attempted to collect these bills.[43]

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[39] CP 209, Declaration of Patrick Downs at 5:2-5:4.

[40] CP 435-440, Declaration of Patrick Downs, *Sisley v. Seattle*, Court of Appeals No. 67870-1-1 Order Denying Discretionary Review.

[41] CP 477, Declaration of Patrick Downs, Exhibit 42, Deposition of Hugh Sisley at 96:18-21.

[42] CP 588-594.

[43] CP 588-766.

In March 2009, City Light transferred $7,397.70 in unpaid bills to the Sisleys' home account.[44] The Sisleys wrote the Hearing Officer and contested the transfer. In June 2010, after considering their appeal, the Hearing Officer reversed the transfer and notified the City's collection agency that $1,106.75 of the transferred amount was being recalled from collection.[45]

In November 2011, City Light transferred $234.32 from a Sisley rental house to the Sisleys' home account.[46] This transfer also contested by the Sisleys was reversed by the Hearing Officer. [47]

E. Seattle Public Utilities installed a water meter after the City determined the rental house was occupied.

In November 2006, Mr. Sisley requested the meter at 6544 16th Avenue N.E. be removed.[48] On November 27, 2006, the City removed the meter and reinstalled it the next day because the house was occupied.[49] The City learned the house was occupied when the City employee who removed the meter was asked what he was doing by an individual who came out of the house.[50] A

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[44] CP 209-210, Declaration of Patrick Downs at 5:10-6:1.
[45] CP 759-765.
[46] CP 210, Declaration of Patrick Downs at 6:1-6:5
[47] CP 1545-1547.
[48] CP 163-178, Declaration of Marcus Jackson.
[49] *Id.*
[50] CP 161-162, Declaration of Mike Conrad.

neighbor also observed and declared that individuals were living in and repairing the house from September 2006 until May 2007.[51]

After finding out a meter had been reinstalled,[52] Mr. Sisley sent a letter to Seattle Public Utilities complaining the meter had been installed without their permission and alleged "squatters" were living in the house because the meter was reinstalled.[53]

F. The Sisleys file this case in Superior Court.

In May 2010, the Sisleys filed their initial complaint in King County Superior Court.[54] The City removed the case to Federal District Court. After the case was removed, the Sisleys dismissed their federal claims including their 42 USC 1983 ("§1983") claim. The Sisleys then filed an Amended Complaint that did not include their federal claims.[55]

G. The City's summary judgment motion is partially granted. After summary judgment, the Sisleys file a second amended complaint.

In September 2012 the trial court dismissed five Sisley claims:

- The state Constitution tort claims;

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[51] CP 194-196, Declaration of Brian Pratt; CP 498, Declaration of Patrick Downs, Exhibit 45, Deposition of Brian Pratt at 17:9-13.

[52] CP 474, Declaration of Patrick Downs, Exhibit 42, Deposition of Hugh Sisley at 39:5-7 (stating the water meter was reinstalled on December 15, 2006).

[53] CP 210, Declaration of Patrick Downs at 6:11-6:14.

[54] CP 105-111.

[55] CP 112-116.

- The tenant relocation assistance and vacant building monitoring housing enforcement claims;
- The tortious interference with business expectations claim;
- The excessive penalty claim; and
- The improper water-supply claim.[56]

The trial court also determined the certificate of release did not release accrued civil penalties associated with the 6317 house but it ended future penalties due to the house being demolished.[57]

After the City's summary judgment motion, the Sisleys filed a second amended complaint that included breach of contract and breach of implied duty of good faith and fair dealing claims.[58] These claims served as the basis for the jury considering whether the City improperly sought to collect unpaid rental house power bills from the Sisleys.[59]

H. The jury finds the Sisleys never brought the 6515 and 6317 houses into compliance, and the City's actions to collect unpaid power bills were not a breach of contract.

After a week-long trial, the jury determined the Sisleys did not bring the 6515 and 6317 houses into compliance,[60] notwithstanding Mr. Narancic's

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[56] CP 1419-1420.
[57] CP 1420.
[58] CP 1489-1494.
[59] CP 2143; CP 2146; CP 2147.
[60] CP 2187-2189.

declarations that he made the repairs.[61] The jury also determined the City did not breach its contract with the Sisleys when it sought to collect unpaid power bills by transferring the bills to the Sisleys' personal account.[62]

III. ARGUMENT

A. Standard of Review.

Review of a summary judgment is de novo, and the appellate court must conduct the same inquiry as the trial court and view all admissible material facts and reasonable inferences from them most favorably to the appellant.[63] Summary judgment is proper when there is no genuine issue as to any material fact, reasonable persons could reach but one conclusion, and the moving party is entitled to judgment as a matter of law.[64] The City demonstrated the Sisley claims should be dismissed on summary judgment and must be decided in the City's favor as a matter of law.

B. Washington courts have not recognized a tort claim for Constitutional violations without augmentative legislation and the claims are otherwise not actionable.

Washington courts have consistently rejected invitations to establish a tort cause of action for constitutional violations without augmentative

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[61] CP 899-900; CP 914-917; CP 924-925.

[62] CP 2187.

[63] *Renner v. City of Marysville*, 145 Wn.App. 443, 448-49, 187 P.3d 286 (2008).

[64] CR 56(c); *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 501, 115 P.3d 262 (2005).

legislation.[65] In *Blinka v. WSBA*, the Court of Appeals upheld the dismissal of the plaintiff's claim on summary judgment stating a violation of the constitutional right to free speech did not give rise to damages because "augmentative legislation" establishing the damages claim did not exist.[66]

Here, the Sisleys argue the City violated five Washington constitutional provisions: the privileges and immunities clause, due process, equal protection, the privacy clause, and excessive fines; and as a result they are entitled to damages.[67] There is, however, no augmentative legislation creating a tort cause of action for violating these constitutional-based claims.

The Sisleys cannot maintain these claims and they were properly dismissed. But even if the Sisleys could bring these claims, the claims are not actionable or fail under the public duty doctrine.

1. The privileges and immunities claim is not actionable.

Robinson v. City of Seattle, cited by the Sisleys as supporting their claim privileges and immunity claim does not apply.[68] The basis for Robinson's constitutional-violation claim rested on a §1983 claim. Although

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[65] *Blinka v. WSBA*, 109 Wn.App. 575, 591, 36 P.3d 1094 (2001); *Hannumm v. Dept. of Licensing*, 144 Wn.App. 354, 362, 181 P.3d 915 (2008).

[66] *Id.*

[67] Amended Opening Brief at 20-22; Amended Opening Brief at 31.

[68] Amended Opening Brief at 20-21, citing *Robinson v. City of Seattle*, 119 Wn.2d 34, 63, 830 P.2d 318 (1992).

the Sisleys state "Section 1983 allows an avenue of redress,"[69] they ignore that they removed their §1983 and federal constitutional claims from their complaint after the case was removed to Federal District Court. Since the Sisleys do not have a §1983 claim and there is no augmentative legislation, the Sisleys cannot bring a privileges and immunities claim.

2. The procedural due process claim is not actionable.

City Light procedures provide a process where if an individual disputes a power bill they may appeal the disputed bill to the Hearing Officer.[70] Although the Sisleys object to how the City addressed their disputed power bills, they availed themselves of the process and prevailed before the City Light Hearing Officer. The Sisleys had adequate due process to challenge the City Light power bills.[71]

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[69] Amended Opening Brief at 31.

[70] CP 457-462, Declaration of Patrick Downs, Exhibit 39, Seattle City Light Department Policy and Procedure DPP 500 P III-425.

[71] *Rabon v. City of Seattle*, 107 Wn.App. 734, 742-48, 34 P.3d 821 (2001) (ability to appeal to hearing examiner satisfied due process).

3. The equal protection claim is not actionable.

The Sisleys' reliance on §1983 and federal constitutional violation cases for their equal protection claim is equally fruitless.[72] They dismissed their §1983 and federal constitutional-violation claims after the City removed the case to Federal District Court.

Although the Sisleys have not appealed the jury decision, they claim their equal protection rights were violated and cite Jill Vanneman's trial testimony as evidence that the City does not recognize the Sisleys' claim that people living and paying rent in their houses are "guests" and not tenants:

> In the context of the Sisley properties, we do not recognize the term "guests." They are tenants. And when a tenant calls, we do inspections as long as they are giving us permission to enter their premises.[73]

In the two cases that led to the large judgments, the 6515 and 6317 houses, this Court recognized that individuals living in their rental houses are not "guests" when it stated "[o]n consolidated RALJ review, the superior court ruled that Lillenthal and Sandifer were tenants and the inspections were

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[72] Amended Opening Brief at 23-27, citing *City of Cleburne, Tex. v. Cleburne Living Ctr. Inc.*, 473 U.S. 432, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985); *Gerhart v. Lake County*, 637 F.3d 1013 (9th Cir.2011); *Village of Willowbrook v. Olech*, 528 U.S. 562 , 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000); *Turner v. Hallberg*, 2005 WL 2104999 (D.Or.2005); *Squaw Valley Development Co. v. Goldberg*, 375 F.3d 936 (9th Cir.2004); *Armendariz v. Penman*, 75 F.3d 1311 (9th Cir.1996); *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68 (2000).

[73] Amended Opening Brief at 27.

lawful."[74] When denying review of the same cases, the Washington State Supreme Court recognized that "as tenants, Mr. Lillenthal and Mr. Sandifer had authority to consent to the searches, notwithstanding any objections from their landlords."[75]

The City should not recognize the Sisley's assertion that individuals living in their houses, paying monthly rent, and holding possession of the house are "guests" not entitled to contact the City and request inspections of the Sisleys' neglected rental properties.

The Sisleys also state "[t]he City has admitted that it subjects Mr. and Mrs. Sisley to more oversight and enforcement action than anyone else in the City."[76] The City has not admitted this. Although it may be true the Sisleys have over the past 20 years been subject to many code enforcement cases, the City's enforcement is in response to tenant and neighbor complaints resulting from the Sisleys' steadfast refusal to maintain their rental houses.

4. The privacy clause claim is not actionable.

The Sisleys argue their privacy rights in rental houses they do not live in have been violated, and the City's inspection of their rental houses must be

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[74] CP 513. Lillenthal and Sandifer where the individuals living in the houses and who the Sisleys claim are "guests."

[75] CP at 527, citing *Seattle v. McCready*, 124 Wn.2d 300, 306, 877 P.2d 686 (1994) (tenants not landlords have privacy interests in leased premises).

[76] Amended Opening Brief at 27.

by warrant.[77] The Sisleys do not, however, have standing to bring their privacy and illegal inspection claims when they did not live in the houses when the inspections occurred.[78]

Tenants, not landlords, have a privacy interest in individual units and common areas.[79] And only individuals with actual authority, including tenants, may consent to inspections.[80] The Sisleys cannot maintain a privacy claim when the City inspected rental properties with tenant consent, and the Sisleys did not have a "legitimate expectation of privacy" in the areas inspected.[81]

The same Sisley argument was rejected by this Court in the context of the 6515 and 6317 houses when the Court said "[t]he tenant, not the landlord, has the privacy interest in the premises, and it is well established that a tenant may consent to a search of rental premises, including the common areas."[82] Furthermore, the Washington State Supreme Court ruled that the tenants who

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[77] Amended Opening Brief at 27-30 (citations omitted).

[78] CP 465, Declaration of Patrick Downs, Exhibit 42, Deposition of Hugh Sisley at 10:11-15.

[79] *City of Seattle v. McCready*, 124 Wn.2d 300, 304-06, 877 P.2d 686, 689-90 (1994); *Cranwell v. Mesec*, 77 Wn.App. 90, 890 P.2d 491 (1995) ("[I]t is clear that landlords do not develop an expectation of privacy in the common areas [of rental properties].").

[80] *City of Seattle v. McCready*, 124 Wn.2d 300, 304-08, 877 P.2d 686, 689-91 (1994).

[81] *State v. Gocken*, 71 Wn.App. 267, 279, 857 P.2d 1074, 1082 (1993) (noting that Fourth Amendment rights cannot be "vicariously asserted").

[82] CP 514, citing *Seattle v. McCready*, 124 Wn.2d 300, 305-06, 877 P.2d. 686 (1994).

occupied the 6515 and 6317 houses had the authority to allow the inspections notwithstanding the Sisleys' privacy objections.[83]

5. The excessive penalty claim is not actionable.

Collateral estoppel or issue preclusion bars relitigating an issue in a subsequent proceeding involving the same parties.[84] Res judicata, or claim preclusion, prevents a second litigation of claims and issues *between* parties that were litigated, or might have been litigated, in a prior action.[85]

Put another way, res judicata "is intended to prevent relitigating an entire cause of action and collateral estoppel is intended to prevent retrial of one or more of the crucial issues or determinative facts determined in previous litigation."[86] Both apply here.

Issue preclusion applies where: (1) an issue decided in an earlier proceeding is identical to an issue presented in a later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom issue preclusion is asserted was a party to or in privity with a party to

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[83] CP 527.

[84] *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004) (citing 14A Karl B. Tegland, WASHINGTON PRACTICE, Civil Procedure § 35.32 (1st ed.2003)).

[85] *Id.*; *see also Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995).

[86] *Christensen*, 152 Wn.2d at 306, citing *Luisi Truck Lines, Inc. v. Wash. Utils. & Transp. Comm'n*, 72 Wn.2d 887, 894, 435 P.2d 654 (1967).

the earlier proceeding; and (4) application of issue preclusion does not work an injustice on the party against whom it is applied.[87]

For claim preclusion to apply, a prior judgment must have a concurrence of identity with a subsequent action in: (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made (identity of interest).[88] Claim preclusion precludes relitigating "every point which properly belonged to the subject of [the prior] litigation, and which the parties, exercising reasonable diligence, *might have brought forward at the time*," not just the claims that were decided.[89]

The 6515 and 6317 house code enforcement actions that established the civil penalties the Sisleys complain are excessive,[90] were litigated to final judgments.[91] This Court and the Washington State Supreme Court have

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[87] *Christensen*, 152 Wn.2d 299 at 307.

[88] *Loveridge*, 125 Wn.2d at 763. Causes of action are identical for res judicata purposes if: (1) prosecution of the later action would impair the rights established in the earlier action, (2) the evidence in both actions is substantially the same, (3) infringement of the same right is alleged in both actions, and (4) the actions arise out of the same nucleus of facts. *See Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 866, 93 P.3d 108 (2004).

[89] *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 859, 726 P.2d 1, 3 (1986) (emphasis supplied).

[90] CP 234-239, *City of Seattle v. Sisley*, Seattle Municipal Court Civil Case No. 08-100; CP 240-245, *City of Seattle v. Sisley*, Seattle Municipal Court Civil Case No. 09-024.

[91] CP at 511-529. Petitioners order for discretionary review and Supreme Court denying review.

rejected the Sisley's claim that the penalties imposed for their refusal to bring the houses into compliance constitute excessive penalties.

The Washington State Supreme Court, when rejecting the Sisleys' petition for review, ruled on this point saying the fines were not excessive:

> And the evidence showed multiple serious and uncorrected violations, some of which endangered tenants' lives. The Court of Appeals did not commit obvious or probable error in denying review of whether the fines here were excessive.[92]

The Sisleys base their excessive penalty claim on "challenging the City's aggressive, targeted enforcement of the Housing Code as well as the mismanagement of Mr. and Mrs. Sisley'[s] municipal accounts and efforts to charge fees and fines *as a whole*."[93] The Sisleys cannot relitigate the identical excessive penalty issue under their as-a-whole theory. This issue has been reduced to a final judgment between the same parties and involves the same

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[92] CP at 528.

[93] Amended Opening Brief at 34-37, citing *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 254 P.3d 818 (2011) (Idaho decision not final decision preventing application of claim and issue preclusion); *Rufener v. Scott*, 46 Wn.2d 240, 241, 280 P.2d 253 (1955) (issue of defendant's knowledge of dangerous equipment not determined in prior case); *Mellor v. Chamberlin*, 100 Wn.2d 643, 646, 673 P.2d 610 (misrepresentation and breach of covenant claims separate actions; claim preclusion less strictly adhered to in the case of covenants of title); *St. Lukes Evangelical Lutheran Church v. Hales*, 13 Wn.App. 483, 534 P.2d 1379 (1975) (restrictive covenant action did not involve same property involved in prior action); *Harsin v. Oman*, 68 Wash. 281, 123 P.1 (1912) (breach of covenant and local assessment dispute separate actions); *Luisi Truck Lines v. Washington Utilities and Transportation Commission*, 72 Wn.2d 887, 435 P.2d 654 (1967) (state license violation and property claim separate actions).

NOVs on the same houses. The Court should reject the Sisleys' second-run excessive penalty claim.

C. The code-enforcement-related tort claims fail under the public duty doctrine.

The Sisleys' code-enforcement-related tort claims fail because the City does not owe an individual duty to the Sisleys when enforcing its codes. "The threshold determination in a negligence action is whether a duty of care is owed by the defendant to the plaintiff."[94] Under the public duty doctrine, liability may not be imposed for a public entity's negligent conduct unless it is shown that "the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general."[95]

In *Taylor v. Stevens County*, the Washington State Supreme Court looked to the State Building Code's purpose "[t]o promote the health, safety and welfare *of the occupants or users of buildings and structures and the general public*" to determine if a duty was owed to Taylor.[96] *Taylor* held the public duty doctrine precluded a negligent building inspection claim when the duty was owed to the public and not Taylor.[97] As applied to zoning

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[94] *Taylor v. Stevens Cy.*, 111 Wn.2d 159, 163, 759 P.2d 447 (1998).
[95] *Id.* (citations omitted).
[96] *Taylor*, 111 Wn.2d at 164 (emphasis in original; citation omitted).
[97] *Taylor*, 111 Wn.2d at 166.

enforcement, *Mercer Island v. Steinmann* held that enforcing municipal codes is a governmental function subject to the public duty doctrine.[98]

Like the State Building Code in *Taylor*, and the zoning code in *Mercer Island*, the City's Housing and Building Maintenance Code exists and is enforced for the benefit of the public:

> The *express purpose* of this Code is to provide for and promote *the health, safety, and welfare of the general public, and not to protect individuals* or create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Code.[99]

And like the building code in *Taylor* and the zoning code in *Mercer Island*, the duty under the City's housing code is owed to the public and not the Sisleys. The public duty doctrine applies to the City's housing code.

There are four exceptions to the public duty doctrine: (1) where the legislature enacts legislation for the protections of persons of the plaintiff's class; (2) where the governmental body fails to enforce statutes or regulations; (3) where a special relationship exists between the plaintiff and the governmental body; and (4) where the governmental body undertakes to rescue the plaintiff.[100]

The Sisleys do not fall under any exception, including the "special relationship" exception. That exception only applies when explicit assurances are given and the plaintiff relies on the assurances:

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[98] *City of Mercer Island v. Steinmann,* 9 Wn.App., 479, 482, 513 P.2d 80 (1973).
[99] SMC 22.200.020.G (emphasis supplied).
[100] *Honcoop v. State*, 111 Wn.2d 182, 188-91, 759 P.2d 1188 (1988).

> A relationship exists between the governmental agent and any reasonably foreseeable plaintiff, *setting the injured plaintiff off from the general public and the plaintiff relies on explicit assurances* given by the agent or assurances inherent in a duty vested in a governmental entity.[101]

Although the Sisleys claim "the City made numerous promises to Mr. and Mrs. Sisley over the years" and the Sisleys "presented declarations in opposition to summary judgment that should have been considered,"[102] Mr. Sisley's declaration supporting the Sisleys' summary judgment response is silent on what promises the City made to them.[103] There is no evidence of a special relationship between the Sisleys and the City, much less an "explicit assurance."

The trial court appropriately determined that the Sisleys' code-enforcement-tort claims resting on the City issuing tenant relocation assistance orders and vacant building monitoring fees are barred under the public duty doctrine.

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[101] *Baily v. Town of Forks*, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987) (emphasis supplied).

[102] Amended Opening Brief at 40-41.

[103] CP 556-561.

1. Besides being subject to the public duty doctrine, the City appropriately assessed vacant building monitoring fees it ultimately waived.

City code places a duty on landlords to "secure any building that becomes vacant against unauthorized entry."[104] The inspection fees are established to reimburse the City for inspecting the building to determine if the building is secure against entry are not a penalty.[105] When the Director determines a structure is open to entry, the structure shall be inspected quarterly to determine if the structure remains closed.[106] Under the code,[107] the Director *may* issue a notice of violation if the house is open to entry — the code does not state that a notice of violation or Director's Order *shall* be issued.

As explained in the statement-of-the-case section, the City sought vacant building monitoring fees after the City determined two Sisley houses were vacant and open to entry: 6418 Brooklyn Ave. N.E. ("the Brooklyn house") and 1322 N.E. 65th St. ("the 1322 house").[108] In both instances, the City notified the Sisleys vacant building monitoring fees were owed.

Contrary to the Sisleys' allegation that the City unlawfully assessed vacant building monitoring fees against them,[109] the City appropriately assessed

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[104] SMC 22.206.160.A.2.
[105] SMC 22.900F.010.
[106] SMC 22.206.200.F.1.
[107] SMC 22.206.200.F.
[108] SMC 22.206.200.F.
[109] CP 113, Amended Complaint at 2:20-24

the monitoring fees when the code states the Sisleys have a duty to keep their vacant houses closed to entry.[110]

Further, the Sisleys cannot claim the City improperly sought monitoring fees for the Brooklyn house when they previously dismissed their improper monitoring fees damages claim. Their improper monitoring fees claim was dismissed when the Sisleys stipulated to "a final resolution of the unfit building case" that included their vacant building monitoring fees damages counterclaim.[111] As to the 65th Street house, the City issued a Director's Order requiring the house be closed to entry but waived those fees as well.

In summary, the City appropriately sought vacant building monitoring fees, but waived the fees after the houses were demolished.

2. Besides being subject to the public duty doctrine, the tenant-relocation-assistance orders had no effect until a court determines a violation existed.

City code allows the City to determine rental housing is unfit when it violates standards including the lack of water or heat,[112] order the unit vacated, and require the landlord reimburse the City for relocation assistance paid to the tenant.[113] As explained in the statement-of-the-case section, the City issued

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[110] SMC 22.206.160.A.2.

[111] CP 254-257.

[112] SMC 22.206.160.A.7 (Shall maintain building in compliance with minimum housing standards that include, in part, providing water under SMC 22.206.050.F, heat under SMC 22.206.090, and an electrical system meeting the Seattle Electrical Code under SMC 22.206.110).

[113] SMC 22.206.260.

tenant-relocation-assistance orders to the Sisleys when power or water was disconnected for lack of payment, or when there were serious housing violations.

The tenant-relocation-assistance-orders, like a NOV has no legal effect until a violation has been found to exist. In *Scott v. Seattle*, the Western District of Washington court held the City's NOV did not establish a due process claim until a court determined a violation occurred.[114]

And in *City v. Sisley*, a King County Superior Court order upheld a City's tenant relocation assistance action.[115] On appeal, this Court cited *Scott* and *Cranwell* as a basis to reject the Sisleys' claim they were entitled to due process when the relocation assistance Director's Order was first issued.[116]

Although the Sisleys claim the City unlawfully assessed the tenant relocation assistance,[117] the orders requiring the Sisleys pay relocation assistance, like the notice of violation in *Scott* and tenant relocation assistance in *City v. Sisley* had no legal effect on the Sisleys until a court determined a violation existed.

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[114] *Scott v. Seattle,* 99 F.Supp.2d 1263, 1268 (1999) (internal citations omitted) (emphasis added), citing *Cranwell v. Mesec,* 77 Wn.App. 90, 890 P.2d 491 (1995).

[115] CP 428-434, Declaration of Patrick Downs, Exhibit 34, Judgment Civil Case No. 10-084; RALJ Order King County Cause No. 11-2-15774-1 SEA.

[116] CP 435-440, Declaration of Patrick Downs, Exhibit 34, *Sisley v. Seattle*, Court of Appeals No. 67870-1-1 Order Denying Discretionary Review.

[117] Amended Opening Brief at 17.

D. The Sisleys' negligence-based-tort claims were appropriately dismissed on summary judgment, and the jury decided the City Light claim against them.

1. The City does not owe the Sisleys a duty when enforcing its housing code.

The Sisleys argue the City is liable for negligence by breaching their "duty to exercise reasonable care in the course of enforcing the Housing Code."[118] They assert the City breached these duties through "negligence in performing these tasks."[119]

As presented above, *Taylor v. Stevens*,[120] and *Mercer Island v. Steinmann*,[121] hold that enforcing municipal codes is a governmental function subject to the public duty doctrine. The doctrine also applies to the City's enforcement of its housing code.

The Sisleys rely on *Sundberg v. Evans* to argue dismissal on summary judgment of their special relationship exception to the public duty doctrine was inappropriate.[122] *Sundberg* involved a property buyer who asked specific questions about zoning standards that applied to the property.[123] At issue was what the secretary said and whether it was reasonable for Sundberg to rely on

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[118] Amended Opening Brief at 37.
[119] *Id.* at 33.
[120] *Taylor*, 111 Wn.2d at 164.
[121] *City of Mercer Island v. Steinmann,* 9 Wn.App. 479, 482, 513 P.2d 80 (1973).
[122] Amended Opening Brief at 40.
[123] *Sundberg v. Evans*, 78 Wn. App. 616, 624, 897 P.2d 1285 (1995).

the answers.[124] Due to disagreement over what the secretary said, the court remanded the special-relationship issue for trial.[125]

Here, the Sisleys did not show a material fact in dispute. In their amended opening brief they stated "Mr. and Mrs. Sisley presented declarations in opposition to summary judgment that should have been considered . . . and created a factual issue."[126] But Mr. Sisley's declaration supporting the Sisleys' summary judgment response is silent on what promises the City made.[127] Unlike *Sundberg* where a specific question and answers were given over the property is at issue, the Sisleys rely on unsupported "numerous promises" made by the City.[128] They do not allege "direct contact" with a specific official nor do they allege "express assurances" that would cause them to reasonably rely on the statements made.

2. City Light and Seattle Public Utilities do not have a generalized duty of care. And the Sisley's City Light claim was decided against them.

The Sisleys argue the City breached a generalized duty of reasonable care in "operating electrical utility and water services."[129]The argument fails when: (1) the Sisleys are barred from raising a tort claim after trying the

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[124] *Id.*
[125] *Id.* at 625.
[126] Amended Opening Brief at 41.
[127] CP 556-561.
[128] *Id.*
[129] Amended Opening Brief at 37.

power-bill-transfer issue on a contract claim; (2) the Sisleys did not appeal the trial court's determination that their City Light claim is governed by contract and not tort; (3) and the issue must be resolved under contract and not tort.

The Sisleys are barred from raising this issue on appeal when they tried the power bill transfers under contract and did not appeal the jury verdict. The Sisleys first brought this issue as their second cause of action in their initial complaint, "Seattle's conduct was unlawful, unreasonable, and tortious."[130] On summary judgment the trial court ruled "[t]he supply of power by City Light to the plaintiffs' properties is governed by contract."[131]The trial court then allowed the Sisleys to amend their complaint a second time to allege a contract claim, which they did."[132]

The Sisleys relinquished the power-bill-transfer tort claim when they filed a second amended complaint to include a contract claim and then tried their power-bill-transfer claim on contract, and have not appealed the jury result that decided their power-bill-contract claim in favor of the City.[133]

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[130] CP at 110.

[131] CP at 1420.

[132] CP at 1492.

[133] CP at 2142. *Teratron General v. Institutional Investors Trust*, 18 Wn.App. 481, 489, 569 P.2d 1198, 1202 (1977) (a lawsuit cannot be tried on one theory and appealed on others); *Capper v. Callahan*, 39 Wn.2d 882, 887, 239 P.2d 541, 544 (1952) (case will not be reviewed on a theory different from that on which it was tried); RAP 2.4(a); *Meresse v. Stelma*, 100 Wn.App. 857, 867, 999 P.2d 1267 (2000) (appellate court will not rule on a matter not decided by the trial court).

Further, the Sisleys have not appealed the trial court's ruling that the City Light claims are governed by contract.[134]

And the Sisleys are barred from bringing a tort claim on an issue governed by contract. Under the independent duty doctrine, an injury in tort only arises when the breach of the tort duty is independent from the terms of the contract.[135] In *Steinbock v. Ferry County PUD No. 1*, the property owners sued when Ferry County discontinued electrical service to the Steinbocks' residential and commercial property after they did not pay their bills.[136] The Court of Appeals Division III held there was not an independent duty outside the contractual relationships between the parties and therefore the tort action was properly dismissed by the trial court.[137]

Here, the City's and customers' contractual obligations are established by City code.[138] The code establishes that if the customer violates the contract including by non-payment, the customer is responsible for all losses and damages.[139] In addition, the code states that owners of rental properties are responsible for the electricity use when the property is vacant or until the

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[134] Amended Opening Brief at 2.
[135] *Jackowski v. Borchelt*, 174 Wn.2d 720, 730-731, 278 P.3d 1100 (2012).
[136] *Steinbock v. Ferry County PUD No.1*, 165 Wn. App. 479, 482, 269 P.3d 275 (2011).
[137] *Id.* at 489-490.
[138] SMC 21.49.100.
[139] SMC 21.49.100.F.

department is notified to open an account for a tenant.[140] Like *Steinbock*, the Sisleys' City Light claim arises out of contract as established by code.

3. Seattle Public Utilities appropriately reinstalled a water meter in the occupied rental house and the claim is barred by the statute of limitations.

The Residential Landlord Tenant Act[141] states it is unlawful for a landlord to terminate a tenant's utility services.[142] City code also prohibits a landlord from terminating water,[143] and places a duty on a landlord to provide water.[144] Where individuals occupy property without the landlord's consent, the Residential Landlord Tenant Act still applies because the individuals become tenants-by-sufferance.[145] And under City code, water service and payment remains in the name of the property owner.[146]

As the facts demonstrate, the house was occupied when Mr. Sisley first requested the meter be removed. Even after Mr. Sisley was notified the property was occupied and was told the water could not be disconnected, he continued to demand that the City disconnect the water.[147] Although the Sisleys claim the City reinstalled the meter without their consent and

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[140] SMC 21.49.100.J.
[141] RCW Chapter 59.18.
[142] RCW 59.18.300.
[143] SMC 22.206.180.
[144] SMC 22.206.160.A; SMC 22.206.050.F.
[145] *Sarvis v. Land Resources, Inc.*, 62 Wn.App. 888, 815 P.2d 840 (1991).
[146] SMC 21.04.260.A.
[147] CP 197-204, Declaration of Ariska Thompson.

improperly billed them for water, the Sisleys request to remove the meter was improper when the house was occupied. Further, the City's reinstallation of the meter followed statutory and code requirements that requires water be provided to occupied properties.

The Sisleys claim the City enabled squatters to reside in the house by refusing to remove the reinstalled water meter. Even if the property was unoccupied when the meter was reinstalled — the neighbor's observations, the City employee's observations, the continuous water use records, and the extensive repairs completed by the individuals living in the property demonstrate otherwise — it was the Sisleys' duty to secure the house against entry.[148] If the Sisleys had complied with the law and secured the property against "squatters", reinstalling a water meter would not have been an issue. Moreover, the Sisleys must pay for water even if the structure was occupied by "squatters" because once the individuals occupied the property they become tenants-by-sufferance, and the Sisleys are required by law to pay for water used at the property.

Furthermore the Sisleys' water-meter-installation claim is barred by the statute of limitations. The water meter was installed on November 27, 2007,[149] and Mr. Sisley knew on December 15, 2007 the meter was

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[148] SMC 22.206.160.A.2.

[149] CP 163-178, Declaration of Marcus Jackson.

installed.[150] The Sisleys' claim was filed over three years later and is barred by the statute of limitations.[151]

4. Enforcing housing and zoning codes for tenant and public health and safety outweighs the Sisleys' rental-income interest.

The Sisleys claim the City interfered with their livelihood through its code inspections.[152] This claim is controlled by *Kane v. City of Bainbridge Island*,[153] where the City of Bainbridge denied a permit application to authorize RV parking and a storage shed constructed in a wetland buffer. The court in *Kane* dismissed a tortious interference claim finding the applicant's interest in developing her property could not outweigh the city's interest in enforcing its land use regulations.[154]

Here, even if the Sisleys could establish this claim and there is no evidence in the record they did so;[155] the City's interest in enforcing its housing code far outweighs their property rental activity.

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[150] CP 474, Declaration of Patrick Downs, Exhibit 42, Deposition of Hugh Sisley at 39:5-7.

[151] RCW 4.16.080.

[152] *Id.*

[153] *Kane v. City of Bainbridge Island*, 866 F. Supp.2d 1254 (W.D. Wash. 2011).

[154] *Id.* at 1265.

[155] Plaintiffs must show the existence of a valid contract or business expectancy, that the City had knowledge of the contact or expectancy, that the City intentionally interfered, and that plaintiffs were damaged. *Kane* at 1265, citing *Commodore v. Univ. Mech. Contractors, Inc.*, 120 Wn.2d 120, 136, 839 P.2d 314 (1992). The interference must also be for an improper purpose or by an improper means. *Commodore,* 120 Wn.2d at 137.

E. The certificate of release for the 6317 house released the NOV requirements and not the civil penalty judgment.

The extent of the release at issued is shown by the language and purpose of the release. The release only released the 6317 house from the requirement to make corrections to the property when the release states it releases "all requirements of the NOV."[156] The requirements of the NOV were to correct the violations at the property.[157]

In contrast, the release did not release penalties imposed by the judgment against this property because the NOV did not impose penalties; the *judgment* imposed the penalties. Further, the release states it was issued because the house was demolished. The release does not extend to the penalties because the penalties will be sought after the structure is demolished.

The deposition statements of City staff confirm the release only releases the requirement to make the corrections called for in the NOV. Carol Anderson agreed that "a certificate of release means the person who received the NOV is no longer obligated to take the corrective action."[158] Diane Davis stated a certificate of release is used to clear title so property can be

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[156] CP 1190-1191, Plaintiff's Motion Seeking Enforcement of City's Procedures, Ex. A.

[157] CP 1454-1458, Housing Code Notice of Violation 1016356; 6317 – 15th Ave. NE.

[158] CP 1824, Anderson Dep. 66:21-25.

transferred.[159] Ms. Davis explains that after a certificate of release has been issued, the fines accrued "up to the point of the release" "would still be out there."[160]

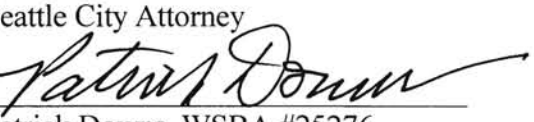
The trial court properly determined that the certificate of release did not release the Sisleys from the judgment entered against them for failing to correct the housing code violations at the 6317 15th Avenue N.E. property.

IV. CONCLUSION

The trial court properly granted the City partial summary judgment and the City respectfully requests the Court uphold the trial court's decision.

DATED this 29th day of July, 2012.

PETER S. HOLMES
Seattle City Attorney

By: 

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[159] CP 1034, Deposition of Diane Davis at 37:12-23.
[160] CP 1034, Davis Dep. 40:9-10.

CERTIFICATE OF SERVICE

I certify that on this date, I sent a copy of the City via messenger to the following party:

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the foregoing being the last known address of the above-named party.

Dated this 29th day of July, 2013.

Rosie Lee Hailey
ROSIE LEE HAILEY