NO. 90259-3

(Court of Appeals Case, Division III Case No. ~~310528~~ 31058-2

SUPREME COURT OF THE STATE OF WASHINGTON

PATRICIA COMER,

Appellants/Plaintiff,

v.

SHARON A. COLISTRO

Respondent/Defendant

PETITION FOR REVIEW

To the

WASHINGTON SUPREME COURT

Sharon A. Colistro, Respondent
East 8319 South Riverway
Millwood, Washington 99212
Phone: (509) 922-2653
Email: samunson@comcast.net

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RULES OF APPELLANT PROCEDURE

RAP 13.4(b) (1), (2), (3), (4) **1, 4**

I. IDENTITY OF PETITIONER

This Petition for Review is filed by Sharon A. Colistro for herself.

II . CITATION TO COURT OF APPEALS DECISION

Sharon A. Colistro, Respondent/Defendant seeks discretionary review under RAP 13.4 (b) (1),(2),(3),(4) per opinion Court of Appeals Division III filed March 27th, 2014. (Exhibit B.) Motion for reconsideration was filed by Sharon A. Colistro on April 4th, 2014 and denied by order entered April 17th, 2014 (Exhibit C)

III SUMMARY OF ARGUMENT THAT THE REVIEW SHOULD BE GRANTED

"Justice is justly represented blind, because she sees no difference in the parties concerned. She has but one scale and weight, for rich and poor, great and small." William Penn

The issues requested for review of the Supreme Court are as follows:

1.) **Jurisdiction:** The Trial Court erred and abused its discretion when it scheduled a trial date and court scheduling order prior to the defendant receiving her first and only summons and complaint on 09/01/2011 contrary law, fifth amendment to U. S. Constitution Bill of Rights, RCW 4.28.000, RCW 4.28.00; CR 4-6, LCR 26F (a),(b).

2.) **Evidentiary**: a.) Legal Recording Exclusion of Plaintiff Patricia Comer: The trial court Excluded the transcript and recording of Plaintiff Comer stating she "slipped on landing mat." This statement was legally recored on 7/13/2011 with Plaintiff's consent per RCW 9.73.030(1)

b.) Legal Affidavit of Defendant as addendum to summary judgment exclusion: The

The trial court sanctioned Defendant barring her personal affidavit which included Each piece of evidence, affidavits, pictures, professional expert reports for the trial, trial, when she in "good faith" filed it as an addendum to a summary judgment motion.

c.) Legal Affidavits of Tenants Exclusion: The Trial Court sanctioned Defendant and barred the use of affidavits by tenants/witnesses Patton/Birdsell based on miss-statement of fact by Counsel King and miss-interpretation of court rules. Witnesses Tenant J. Patton/ K. Birdsell were listed as dual witnesses for Plaintiff and Defendant per filed 3/05/2012 witness list. (CP 48) Counsel King contended the "witnesses" were in fact "parties" and only he may contact them.

d.) Expert and lay witness exclusion: The Trial Court Severe Sanction violated 5th amendment of U.S. Constitution of due process when 3 expert witness and 2 lay witness were excluded from trial as well as all the evidence previously approved for trial based on Miss-statements of Counsel King regarding the scheduling order.

3.) **Failure to Notify of inspections of property and Trespassing:**

a.) Plaintiff's Civil Engineer entered upon the roof of Defendant's property without giving neither notice to Defendant nor her counsel violating CR 34A(a).(b)

b.) Plaintiff's Husband trespassed at least 3 times entering upon the roof without giving notice to Defendant, neither counsel nor tenants in violation of CR 34A. The alleged pictures and tampered evidence should have been stricken from court procedures.

4.) **Limited Estate:** The Court erred in ignoring the tenant's limited estate lease ruling that the Tenant's had exclusive use of the leased Grace premises.

5.) **Miss-statement of Facts by Tenant J. Patton and Plaintiff P. Comer**: The court erred in accepting miss-statement of fact as fact by Tenant Patton and Plaintiff.

6.) **Plaintiff's Civil Engineer Corp Opinion outside his field of expertise:**

The Trial Court erred when it accepted statements opined by Engineer Corp as fact.

7.) **Plaintiff Trial Evidence does not support verdict.** The evidence and testimony at trial does not support verdict even viewed in favorable light to Plaintiff. Exclusion of all Defendant's trial evidence and 5 witnesses was not a harmless error but altered the verdict denying due process and a fair trial.

IV STATEMENT OF THE CASE

(Exhibit one list a Chronology of Events for quick reference)

Synopsis: *The Plaintiff, Patricia Comer slipped on the landing mat while exiting the front door of John Patton's and Kristina Birdsell leased premise at East 2928 Grace, Spokane, Washington 99207 (owned by defendant) during an outside smoking break following Christmas Eve dinner and celebration as an invited guest with her husband Jerry Comer. (RP 144, line 15-20)*
As she tripped she stepped off the East side of the 4 ft. x 5 ft landing injuring her leg. Plaintiff Comer was squeezed of the east side of the landing by her husband and tenant John Patton as they huddled smoking on the small landing. On 12/24/2011 the Mayor of Spokane declared Spokane, Washington in a state of emergency due to the severe snow storms and 10 day continuous freezing conditions commencing 12/16-26/2011 with temperatures ranging from a low of -5 degrees to 29 degrees Fahrenheit. Snowfall of 12.5 inches commenced 12/17/2011 and culminated with 61.5 inches of snow on 12/31/2011 per National Climatic Data Center. The 12/24/2011 wind speed was 7. 1 mph. During Plaintiff's Comer's Visit with J. Patton/K Birdsell the tenants failed to continue to maintain the landing from natural occurring snow element. The proximate cause of plaintiff injury as she stated was "slipping on the landing mat" causing her to stepping off the 4 ft x 5 ft landing edge and falling. (Exhibits2-21, CP 73-74).
Plaintiff Comer states: "I was here on the landing, right here next to the bushes, and I just went to take a step off. And I don't even know, Your Honor, if my foot, if my foot even hit the step or not or if I stepped off the edge of the landing, but that is when I slipped" (RP#151, Line 12-17)

V. Argument

(Incorporated by reference is the Affidavit of Sharon A. Colistro, defendant filed with Superior Court with case No: 2009-02-03400-6 on 6/19/2012; Petition for Relief of Default Judgment filed 7-20-2011, Appellant original and supplemental brief filed with Division III Court of Appeals respectively 2/08/2013 and 4/04/2013 and motion for reconsideration filed 4/14/2014.)

Synopsis: All four of RAP 13.4(b)(1-4) tests are applicable for review by the Supreme Court. As the gifted artist/sculpture Michael Angelo would not have achieved painting the Sistine Chapel without basic tools as paint, paint brushes, scaffolding and "expert" assistance neither can there be due process of a fair – impartial trial without the basic tools of evidence, affidavits, professional reports and "expert" and lay witnesses. Pope Julius II did not sanction Michael Angelo in the year 1508 and deprive him of the tool for success neither should the Trial Court impose such severe sanctions to deprive a "good faith" defendant from having the basic tools required to prevail at trial.

RAP 13.4(b)(1): If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court.
RAP 13.4 (b)(2): If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals.
RAP 13.4(b)(3): If a significant question of law under the Constitution of the State of Washington or of the United States is involved.
RAP 13.4(b)(4): If the petition involves an issue of substantial public interest that should be determined by the Supreme court.

ISSUE ONE JURISDICTION: Case was filed on 7/31/2009. Defendant received first Summons/ complaint 9/01/2011 following default hearing. (Exhibit 1, CP 34) Trial court entered an order setting trial date and case schedule on 7/22/2011 which was prior to defendant receiving her first and only summons/complaint which was 9/01/2011 following Default Hearing. She answered said complaint 9/20/2011 following default hearing.(CP. 1, 19, 34) Plaintiff Counsel King initialed said service agreement on 9/01/20111 (Exhibit 1-B). The trial court was notified in the Petition for Relief of Default, the Addendum that Defendant had not received a summons/complaint and orally at each hearing as the

above referenced brief state: *"The vacation of the judgment or setting aside of the judgment rendered on 10/9/2009 per petition request as Defendant did not receive service of summons and complaint."* (CP. 9, 13, 15)

RCW 4.44.020 states regarding Notice of Trial: At any time after the issues of fact are completed in any case by the service of complaint and answer or reply when necessary, as herein provided, either party may cause the issues of fact to be brought on for trial.."

LCR 26 F. Scheduling order (a) Status Conference: "In civil cases in which the complaint has been served on any defendant, the court administrator will schedule a status conference, to be conducted by telephone not sooner than 90 days, nor later than 120 days after the complaint is filed...."

CR 5(a) Service and filing of pleadings: "every order required by its terms to be served, every pleading subsequent to the original complaint....every paper relating to discovery required to be served upon the party..."

CR 60(b)(1),(3), (4), (5) (11) Relief from Judgment or Order: "Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;..(3)Newly discovered evidence which by due diligence should not have been discovered in time to move for a new trial under rule 59(b); (4)) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (5) The judgment is void; (11) Any other reason justifying relief from the operation of the judgment."

The trial court was premature, lacking authority, in scheduling the trial date and scheduling order when the defendant lacked service of summons/complaint.

Case Law: Review of trial court ruling under CR60(b) is abuse of discretion.

Support for the statement in bold is found in found in Morris v. Railroad, 149 Wn. App. 366, 370-1, 203 P. 3d 1069 (2009); Shaw v. City of Des Moines, 109 Wn. App. 896, 900-01, 37P.3d 1255 (2002.) Discretion is abused if it is exercised without tenable grounds or reasons. *Morris, supra, at p. 370. Also, 112 Wn. 23d 612, 772 P.2d 1013 Marriage of Leslie "a party may move to vacate a void portion of a judgment at any time under CR 60(b)(5). "A final judgment may be vacated during a collateral proceeding only by demonstrating that it is void, i.e. entered without jurisdiction over the parties or the subject matter or without inherent power to enter the decree involved." 86 Wn. 2d 241, Bradley Lave Bresolin, Petitioner, v. Charles Morris.*

ISSUE TWO EVIDENTIARY: ***Synopsis:*** *Plaintiff's Counsel presented known miss-statement of material facts to the Trial Court during his Motion Limine which resulted in prejudice and severe sanctions against defendant and exclusion of 3 Expert Witness,*

2 lay witnesses and each and every piece of evidence in Defendant's possession which was already approved for trial. These sanctions were based on three trial court errors a.) alleged conflict with the scheduling order between the date of the report and service of report to Plaintiff Counsel King b.) alleged improper communication by defendant with her tenant John Patton and c.) the alleged unauthorized recording of Plaintiff Patricia Comer. Due process was denied Defendant under the 5th amendment to the U.S. Constitution, due to trial court's abuse of discretion, incorrect application of RCWs, and Civil Court Rules not sustained by Supreme Court Case Law.

The trial court states: *"None of the, quote, interrogatories to witnesses will be admissible. None of the material that was delivered to the Court or to Mr. King within the last week will be utilized, and the irregularity in the dates between the Maloney, Gill and I believe Fassett reports, date of reports versus service of reports creates a significant doubt as to the validity, reliability and even admissibility of some of the proffered testimony.*
The Fassett affidavit is by no means an acceptable response to interrogatories, requests for productions, requests for admission, and the effort to contact Mr. Patton and somehow now shift responsibility is not going to be recognized or available, again based on the improper communication.
No information received from any of the recordings, the unauthorized recordings may be part of the testimony.
The Court then will be recognizing Defense witnesses to include only ...one of the three experts that are listed. (Defendant's lay witnesses were also excluded) (RP 37-42, lines 1-25)

2a) LEGAL RECORDING OF PLAINTIFF COMER, EXCLUDED

Plaintiff's Counsel King states in his Motion Limini "Defendant contacting the Plaintiff personally after suit had been filed at her home." (CP 67)

A.)The one and only summons and complaint regarding this cause was received after the default hearing 9/01/2011 and personally acknowledged by Counsel King's initials.(Exhibit # 1-b) The suit was filed 7//31/2009 (CP1)

B.) No suit was filed at Colistro's home during the alleged attempt of service. Mrs. Colistro was working out of town. The premise is posted "No Trespassing". The premise is secured by a 4ft-6ft- fence with 2 locking gates. The gates were locked as Mrs. Colistro was working out of town and no one was residing at the

premise to accept or file documents. CR4(1) states: *"the summons must be signed and dated by the plaintiff or his attorney and direct to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the "person" whose name is signed on the summons." This rule corresponds to RCW 9.72.030(1)(b) "Private conversations, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation."*

C.) Mrs. Comer and Mrs. Colistro had a 3 minute conversation at Mrs. Comer's resident on July 13,2011. This conversation was legally recorded per RCW 9.73.03(1) with Mrs. Comer's consent. As stated above Mrs. Colistro on this date had never received a Summons and Complaint per Civil Rule 3 and 4. The First Amendment to the United States Constitution codifies the freedom of speech as a constitutional right. *"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The Washington State Constitution concurs: Article 1, Section 5, and Freedom of* Speech. *"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.*

D.) Mrs. Comer consented to being recorded on 7/13/2011 and she viewed the recorder. Mrs. Colistro recorded Mrs. Comer and wrote answers on a clip board to a list of prepared questions. Mrs. Comer's certified transcript states: *Mrs. Colistro to Mrs. Comer: "You don't mind if I record it? I'm just writing notes. Mrs. Comer: "No, that's okay." (CP 13,14, 71-74) (Exhibit # 9a. b)*

Plaintiff Counsel King knew the recording was authorized as he possessed the printed transcript, two copies of the compact disc, he was told in writing and orally at the default hearing, in the interrogatory responses and during the Defendant's deposition when she states: "I went over and I personally spoke to Patricia and I personally spoke to Mr. Patton and I made notes on it and I

recorded it." (P. 56, line 16-18 depositions) *Plaintiff Counsel King implication that Defendant had made "unauthorized recording" to the trial court is a breach of his fiduciary duty and lack of honesty towards the tribunal.*

The trial court admonishes defendant: *"No information received from any of the recordings, the unauthorized recordings may be part of the testimony."(RT 37-38 et.al)*

Citations: 1.) *Nov. 2002 State v. Townsend 669, 147 Wn. 2d 666 "We conclude that the act (Washington's Privacy Act) was not violated because Townsend impliedly consented to the recording of his e-mail and ICQ."*

2.) State v. Roden, 169 Wn. App. 59 list four-prong elements whether the privacy act (ch 9.73 RCW) has been violated: "(1.) a private communication transmitted by a device, that was (2) intercepted by use of (3) a device designed to record and/or transmit, (4) without the consent of all parties to the private communication.

3.) State v. Taylor, 22 Wn. App. 308, 318, 589 P2d 1250, rev. denied, 92 Wn. 2d)1013 (1979) The tape clearly existed and the use of the tape would have changed the result of the trial impeaching Plaintiff Comer. The exclusive of the audio tape recording is not harmless error.

4.) State v. Ballew,167 Wn. App. 359 *"An appellate court engages in independent review of the record in a First Amendment case to ensure that the judgment entered in the case is not based on a forbidden intrusion on the field of free expression.....The free speech clause of the first Amendment is applicable in the states through the Fourteenth Amendment.....For the purposes of RAP 2.5(a)(3), which allows a trial court to consider a claim of trial error that was not first raised in the trial court if the claim alleges manifest error affecting a constitutional right, and error is "manifest" if it had practical and identifiable consequences in the case.....The focus of the actual prejudice analysis must be on whether the error is so obvious on the record that appellate review is warranted."*

5.) First Amendment to the U.S. constitution: "Congress shall make no law.....abridging the freedom of speech.

Plaintiff Comer orally gave her full consent to being recorded when she was asked: "You don't mind if I record it? Plaintiff Comer replies: "No, that's o.k." (Exhibit # 9a,b; CP 71-74)

ISSUE 2b) DEFENDANT'S SUMMARY JUDGMENT AFFIDAVIT, EXCLUDED:

On 6/05/2012, Defendant's Counsel filed a motion for summary judgment. Counsel Notified Defendant that the hearing would be held just prior to the trial on 6/25/2012. Defendant filed a good faith personal *affidavit* on 6/19/2012 as a supplemental addendum to the summary judgment containing each piece of evidence

Defendant possessed including approved Exhibit Log evidence. (CP 57,71-75, Exhibit 12)

The trial **Court Sanction of Mrs. Colistro:** RT: {page #37 line 13-16) *"I will trust that Ms. Murphy has admonished her client that all parties are to subject to the rules, and that ex parte communication cannot be accomplished through the effort of a party rather than counsel to that party.....line 21-24 Because it is of such comprehensive nature, the Court is satisfied that, although the answer won't be disregarded or vacated, that significant expert testimony and factual testimony witnesses will be stricken. ..Page #38 line 1-25 "None of the, quotes, interrogatories to witnesses will be admissible. None of the material that was delivered to the Court or to Mr. King within the last week will be utilized and the irregularities in the dates between Maloney Gill and I believe Fassett reports, date of reports versus service of reports creates a significant doubt as to the validity, reliability and even admissibility of some of the proffered testimony."*

Washington Court Civil Rule 56(e) Summary Judgment: *"Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.."*

Citations: 128 Wn. 2d 460, Mithoug v. Apollo Radio: *Evidence called to trial Court's attention-Ignored by Trial Court-Effect: "On review of a summary judgment, an appellate court may consider all evidence properly call to the trial court's attention, whether or not the trial court considered that evidence when it ruled on the motion.*

In Mithoug v. Apollo Radio the Supreme Court held that the "Court of Appeals should have considered documents called to the attention of, but not considered by, the trial court, the court vacates the decision of the Court of Appeals and remands the case to the Court of Appeals for reconsideration."

Citation: *135 Wn. 2d 658, Folsom v. Burger King (7) Judgment-Summary Judgment-Affidavit-Review Redacted Evidence. "A trial court's redaction of evidence in an affidavit supporting or opposing a motion for summary judgment is subject to de novo appellant review." "An appellant court reviewing a summary judgment may consider all of the evidence presented to the trial court in the case, including evidence the trial court redacted from affidavits supporting or opposing the motion for summary judgment."*

660 Folsom v. Burger King 135 Wn. 2d685 states: "No special relationship arises that would impose a duty on a party to protect another from harm unless the party has in some way been entrusted with or taken control of the person's well-being." The tenants Patton/Birdsell invited Plaintiff Comer to their leased residence. The tenants had a duty to maintain the landing free of snow/debris not the landlord per lease agreement. Plaintiff states she slipped on the landing matt and stepped of the east

edge of the small crowded 4ft x 5 ft landing where her husband Jerry Comer and Tenant J. Patton were huddled during a smoking break. The frozen rain gutters which were 5-20 feet away from the Plaintiff when she fell did not leak as they were frozen for a ten day period, there was a blizzard, the town was in a state of emergency with 61 inches of snow on the ground. The Special Relationship existed between the tenants and his invited guest Plaintiff Comer. This is reiterated in Joellen Gill's, Applied Science report: *"Regardless of the many factual disputes addressed above....Mr. Patton knew that his guests would be using the subject walkway to enter and exit the home and knew of the propensity for ice to form on the subject walkway: It was his responsibility to ensure the walkway was in a safe condition." (Exhibit 18, CP #76)*

This scenario was also pointed out to the court in the Motion for Relief of Default judgment when Defendant states: Landlord had no duty owed to Plaintiff. The tenant had a duty owed to the Landlord and Plaintiff to keep walkway, steps and sidewalks in reasonable safe conditions free from debris as his cigarette coffee can, snow or ice." This statement is based on Tincani v. Inland Empire Zoological Soc'y, 124 Wn. 2d 121, 127-28, 875 p.2d 621 (1994) "A cause of action in negligence requires that a plaintiff establish the existence of a duty owed, the breach of that duty, a resulting injury and a proximate cause between the breach and the injury. "The threshold determination of whether the defendant owes a duty to the plaintiff is a question of law." Tincani, 124 Wn. 2d at 128. "The existence of a duty may b predicated upon statutory provisions or on common law principles." Degel v. Majestic Mobile manor, Inc. 129 Wn 2d r3, 49, 914 P. 2d 728 (1996) (CP 13,14) The Tenants – J.Patton/K. Birdsell owed a duty to their invited guest to maintain the landing free of debris not the landlord.

ISSUE 2C: LEGAL AFFIDAVITS OF TENANTS EXCLUDED FROM TRIAL:

On 4/23/2011 the discovery cut of date, Tenants J. Patton and K. Birdsell completed affidavits for the defendant. Counsel Murphy forwarded these affidavits timely to Counsel King on 5/24/2011 one day "before" the exchange of witness lists, evidence, etc. was due. Counsel King objected to the timeliness and stated that only he could speak with Defendant's tenants per Motion Limini filed 7/11/2012 states, even though they were listed as witnesses for the defendants per witness list: (CP #67) Counsel King:

"As is clear from Exhibit 3, the defendant personally (while represented by counsel) served Interrogatories to eyewitness John Patton and his girlfriend Kristina Birdsell, on April 23, 2012, which was answered the same day. They are also the defendant's tenants. However, CR 33 only allows interrogatories to be served on parties to the action and a copy of all pleadings would be required to be served on all other parties pursuant to CR5(a). Defendant violated CR33 by serving Interrogatories on a non-party, CR 5(a) by not serving a copy on opposing counsel at the same time....as interrogatories are not allowed by the court on non-parties...There can be no cure for

the prejudice caused by the Defendant's malfeasance and Plaintiff asks the court for an appropriate sanction and terms...("pages 6&7 lines 1-25 Motion Limine.)

Counsel King's Motion Limine is not based on Legal Standards of CR 33 and CR 5(a).

These Court Rules are not applicable to" witnesses" as they are not "parties."

The Washington State Court Glossary of terms defines the two terms as follows: Parties= "persons, corporations, or associations who have commenced a lawsuit or who are defendants. Witness= "Person who testifies under oath before a court, regarding what he or she has seen, heard or otherwise observed."

CR5 refers to "Service and Filing of Pleadings and other Papers that are *"parties" to the suit. CR5(a) states... "every paper relating to discovery required to be served upon a party unless the court otherwise orders. The affidavits were served timely to the Plaintiff's Counsel King.*

*Discovery Rule **CR 26(b) (4)** states: " A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, **a person not a party** may obtain without the required showing a statement concerning the action or its subject matter previously made by that person.....For purpose of this section, a statement previously mad is: (A) a written statement signed or otherwise adopted or approved by the person making it..." **CR26(a)** Discovery Methods. "Parties may obtain discovery by one or more of the following methods: depositions....written questions..."*

Citation: Johnson v McCay 77 Wn. App. 603, 893 p. 2d 641 states: "Documents for one who is not a party to the present suit are wholly unprotected by Rule 26(b) ....8 Charles A. Wright et al, Fedral Practice 2024, at 345 (2d ed. 1194). The rules of evidence CR 5 and Cr 33 were not applicable to the tenants as they were witnesses not parties.

2d EXPERT AND LAY WITNESS EXCLUSION: The trial Court excluded three Expert and two Lay witnesses plus all of defendant's trial evidence base on Miss-Statement of Fact's in Council King's Motion Limine. The Court states: *"the irregularities in the dates between Maloney, Gill and I believe Fassett reports, date of reports versus service of reports creates a significant doubt as to the validity, reliability and even admissibility of some of the proffered testimony." The Court then will be recognizing Defense witnesses to include only ...one of the three experts that are listed. (Defendant's lay witnesses were also excluded) (RP 37-42, lines 1-25)*

Per scheduling order the discovery cutoff was 4/23/2011 and the exchange of witness list, exhibit list and documentary exhibits was Friday 5/25/2011. Monday 5/28/2011 was Memorial Day and 5/29/2011 was the next working day per Civil Rule 6(a).

Mr. Fassett's expert report was completed on 4/23/2012 ; S.C. Maloney, P.E, certified

building Inspector and Professional engineer dated 2/11/2012; Mr. Edward Boselly II, Meteorologist dated 4/20/2012; J. W. Holcomb, Consulting Meteorologist dated April 13, 2012; Gary McDonald, previous tenant dated 2/29/2012; J. Colistro, EMT/Fireman dated 2/2/12 and JoEllen Gill, Applied Cognitive Sciences dated 5/27/2012; Affidavits of K. Birdsell/ J. Patton 4/23/2012. (Exhibits 8, 16-22)

All of the affidavits and expert reports were obtained prior to 4/23/2012 except JoEllen Gill as she was out of the Country. She completed it 5/27/2012 and it was forwarded 5/29/2012 with this note from *Counsel Murphy to Plaintiff Counsel Mark King on 5/29/20112:*

"Mark, haven't been able to reach you since sending our suggested additions and exhibit list on Friday last. I hope that means you had a good holiday-I am sending a corrected list of exhibits, (numbering wrong). I did add one, but I think you will not find in that it is an official government document. Also sending a summary report from one of our experts, Joellen Gill. Sorry it is late, our communications were a bit confused.
Please let me know when you would be at your office so that I can come down and sign the Joint Management Report and drop off our exhibits. Thank you (Exhibit 16)

Plaintiff Counsel King blamed Defendant's Counsel for not filing his trial management on 5/25/2011 filing it on 6/04/2012 (CP #55) in violation of the Scheduling Order. Counsel King violated the scheduling order by not meeting the 4/23/2012 cut off or 5/25/2012 document exchange regarding Dr. Schenker's Medical Report or Mr. Corp's engineering report.
Defendant Counsel Murphy states: "My concern, Your Honor, the report comes up with some recommendations and conclusions, of course, which we only got to see today, (RP: page 204, lines 7-15.)

The severe sanctions of Defendant Colistro are not supported by the record. The defendant was deprived of the necessary tools to prevail at trial-Expert / Lay Witness and Evidence. Counsel King's miss-statements during the Motion Limine undermine the integrity of the Court.

Citations: Estate of Fahnlander 81 Wn. App. 206.913 P.2d 426 (1996) states: *"Although a trial court has wide latitude to determine the sanction to impose for a discovery violation, the court should impose the **least severe sanctions** that is adequate to serve the purpose of the particular sanctions." "CR 37 sanctions for failure to comply with a discovery order are inappropriate if the failure to comply is neither unjustified nor unexplained."*

This view is supported by Washington State Physicians Ins. Exch. V. Fisons Copr, 122 Wn. 2 d 2999, 338,339,858, P.2d 1054 (1993) stating "A court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds." Blair v TA Seattle E. No. 176, 171 Wn 2d, 342, 254 P. 3d states: "Although a trial court generally has broad discretion when fashioning a remedy for a discovery violation, it may not impose a severe sanction for a

discovery violation unless it indicates on the record that it has considered the sufficiency of the lessor sanction, the willfulness of the violation and whether the violation substantially prejudice the opponent's ability to prepare for trial. A trial court abuses its discretion by imposing a harsher sanction for discovery violation without making such finding on the record."

The three elements listed above were not addressed by the trial court: 1.) Lessor sanctions: The trial court did not consider a lessor sanction but instead stated it may also impose monetary damages stating: "but I am likely to be ordering some **financial terms** upon proper documentations. Reserving at this time."(RT page 40, line 16-17) 2.) Willfulness of violation: Defendant has always come to the Court with clean hands, with integrity and honesty. The defendant diligently followed the scheduling order without service of a summons/complaint, timely securing documents, evidence and experts for trial. The trial court erred in sanctioning Defendant. The defendant is not aware of any scheduling order violation and certainly there is no willfulness action of defendant or her counsel. 3.) Whether the violation substantially prejudice's the opponent's ability to prepare for trial: There are no violation as the recording was legal, the affidavits and expert reports were prepared and delivered per scheduling order except Mrs. Gills as she was in Europe which appears as a valid excuse. The Defendant is the only party prejudiced standing before the court with empty hands "without evidence" and "without witnesses" in violation of the U. S. Constitution 5th amendment, due process.

Teter v, Deck 174 Wn 2d 207, 274 p. 3d 336 mirrors Blair v. T. A. Seattle stating: "Before excluding a witness as a sanction for discovery violation, the trial court must make a Findings that the violation was willful and prejudicial and was imposed only after explicitly considering less severe sanctions." As stated above the trial court considered adding financial sanctions not reducing sanctions (RP 20-452 et.al.)

ISSUE THREE: FAILURE TO NOTIFY INSPECTION OF PROPERTY AND TRESPASSING

Synopsis: *Plaintiff's husband J. Comer trespassed on tenant's posted property without their knowledge or defendant's knowledge going on the roof of 2928 E. Grace admitted 3 times at trial, tampering with evidence and bending rain gutters. Plaintiff's witness Corp inspected Grace roof twice, posted no trespassing, without notifying tenant nor defendant in violation of CR 34 (A)(a) & (b) Entry Upon land for inspection which states:*

CR 34 (a) Scope. " Any party may serve on any other party a request (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designate object or operation thereon, within the scope of rule 26(b)."

2(b) Procedure Inspection: *"The request may...be served upon the plaintiff after the summons....the request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after the service etc."*

Civil Rule 26(a) General Provisions Governing Discovery: *"Discovery Methods: Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories, production of documents or things; or permission to enter upon land or other property, for inspection and other purposes.*

Counsel King created a potential liability issue for Mrs. Colistro. The timely objections by Counsel Murphy, where over-ruled by the court. Counsel Murphy requests exclusion of Corp's testimony et. al. stating "**Ms. Murphy**: *"Your honor I would like to make a motion before the Court proceeds to hear Dr. Corp's testimony, and I am asking the Court to exclude any testimony from Dr. Corp, including his report and his photos, on the basis that Mr. King did not obtain permission and, of course, as we all know, the Rules of Evidence would have required him to." (CT p. 186 lines 4-12) ..."In fact, Mr. King was well aware that Ms. Colistro did not know, and he had an obligation to move for permission to inspect her home"..(CTp. 187-188 line 24-25) "The liability was to attach to Mrs. Colistro and Mrs. Colistro did not give her tenant permission to have just anybody act against her. That is implied by the no trespassing sign.."(RT p.192, line 15-19; p.186-203 incorporated.)*

Citations: The case law is definitive in that the Court and Counsel King were to protect the Party in accordance with CR 34 (A) (a) & (b). Mrs. Colistro was the party not the tenant and she should have been protected from additional liability during inspection of the premises not the witness.

The Court of Appeals held this view when it vacated the discovery order that erroneously failed to balance the degree to which the proposed inspection would aid in the search for truth against the burdens and dangers posed by the inspection. (132 Wn. App. 818 Gillett v. Conner No. 55796-3-I Division One May 8, 2006.) Counsel King nor the Court crafted a discovery order or even made an attempt to comply with CR 34 to notify the Party, Mrs. Colistro nor Counsel Murphy.

The above cited Gillett v. Conner case law continues by stating: "(2) Discovery-Scope-Review Standard of Review. A trial court's order on a motion to compel

pretrial discovery is reviewed for manifest abuse of discretion. An order that is manifestly unreasonable or that is based on untenable grounds constitutes an abuse of discretion. (3)Courts-Judicial Discretion-Abuse-What Constitutes-Erroneous Legal Standard. A trial court necessarily abuses its discretion if it bases a ruling on an incorrect legal standard. (5) Discovery-Entry Upon Land For Inspection-Discovery Order-Balancing Test. In crafting a discovery order allowing a party to enter upon the land of an opposing party for inspection under CR 34, a trial court must give effect to CR 26(b) by balancing the degree to which the proposed inspection would aid in the search for truth against the burdens and dangers posed by the inspection and y limiting the frequency or extent of use of the discovery methods to prevent undue burdens, even in the absence of a motion for a protective order under CR26(c). Courts may impose limits as to time, place, and manner of inspections, including limits on what specific items or areas may be examined, limits on who may conduct the inspection and who may be present during the inspection, limits on the nature of the inspection, and requirements that all testing, sampling and measuring be nondestructive."

"A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. (Wash. State Physicians Ins. Exch & Ass'n v. Fisions Corp, 122 Wn2d 299, 339, 858 P. .2d 1054 (1993). A trial court necessarily abuses its discretion if it applies the incorrect legal standard." (Fisons, 122 Wn 2d at 339).

"Evidence obtained as a result of an unconstitutional entry onto private property must be suppressed." (142 Wn. App. 851, State v Jesson No. 25882-3-III, Division Three, January 29, 2008.)

ISSUE FOUR: LIMITED ESTATE: Tenant's lease is a limited estate.

Synopsis: Counsel King miss-statement of facts claimed that Tenant Patton/K Birdsell had exclusive use of the premises at E. 2928 Grace ignoring the limited lease and the Landlord Tenant Act, RCW 59.18.150. The Court erroneously concurred stating:

"Here because the tenant was technically in possession and control of the premises, the formal request under Rule 34 would not be necessary in that the necessary consent was given." (CT p. 205 line 22-25)

The lease at 2928 E. Grace states: " Lease States section (13) Lessor's Access: Landlord reserved the right of access to the premises for the purpose of a.) inspection b.) Repairs alterations or improvements c.) to supply services, or d.) To exhibit or display the premises to prospective or actual tenants. (exhibit P-26

RCW 59. 18.150 Landlord's right of entry: *"The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual*

purchasers, mortgagees, tenants, workers, or contractors.(6) The landlord shall not abuse the right of access or use it to harass the tenant, and shall provide notice before entry as provided in this subsection. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' written notice of his or her intent to enter and shall enter only at reasonable times. The notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry. The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit."

Citations: "In general, a lease is a conveyance of a limited estate for a limited term with conditions attached. As a general rule, areas that are necessary to the tenant's use of the premises and that are for the exclusive use of the tenant and the tenant's invitees pass as an appurtenant to the leased premises even if they are not specifically mentioned or described in the lease. ..... "an apartment lease operates on the same principle as does the lease of a single family residence." (162 Wn. 2d 773, Action Council v. Seattle Housing Authority et al, No 80006-5, En Banc, Argued May 31, 2007, Decided January 3 2008.

"A trial court necessarily abuses its discretion if it applies the incorrect legal standard." (Fisons, 122 Wn 2d at 339). The tenant's estate was limited per lease.

ISSUE FIVE: MISS-STATEMENT OF FACTS BY TENANT J. PATTON/ P. COMER:

Synopsis: *Tenant J. Patton statement that he notified Defendant* Colistro of a plumbing problem 3-4 weeks prior to Plaintiff's fall on *12/24/2009 and mentioned the rain gutters were being compromised by snow and ice is false and miss-statement of fact that the court should not have relied based on the following tear of facts:*

1.) There was ***no snow or ice*** *in Spokane 3-4 weeks prior to 12/24/2009. Per NOAA weather report the snow commenced 12/18/2009 and continued until 12/31/2009 culminating in 61.5 inches of snow. (Exhibit five, CP 73-74)*

2.) Photographs by Plaintiff taken 3-4 months following incident do not show miss-alignment of entrance rain gutters. The only rain gutter that is shown miss-aligned is between the two garages where Plaintiff husband J. Comer tampered with the evidence on three separate occasions ignoring "no trespassing signs."

3.) Tenant Birdsell (J. Patton's companion and co-tenant), sworn testimony, and states "NO" plumber was called to her residence in 2008. (RP 356; line 20)

4.) Tenant Birdsell was asked if she noticed any leaks 12/24/2009: She answered: "NO" (RP 347, line 23) She continues: "I think at that point everything was frozen and water was not the concern. It was snow. (RP 331, line 10-11.) Counsel asked of Tenant Birdsell: "did you notice any dripping, leaking?" Birdsell answered: "Not that I remember." (RP 335, line 2-3)

5.) Plumber Carey is the only plumber to service the Grace property and his first visit was 8/2011. (Exhibit 8).

6.) Defendant in sworn statements ,motions, affidavits, interrogatories and deposition has repeated stated that Tenant J. Patton never contacted her orally or in writing in December of 2008 to repair any rain gutters for any reason.

RCW 59.18.070: The Landlord Tenant Acts defines how to cure a tenant's repair request after they give "written notice". The landlord cannot cure a defect that does not exist as in the alleged rain gutter defect which did not exist.

Citation: *78 W. 2d 636, In the Matter of the Estate of M. Josephine Reilly, Deceased. "Evidence might not constitute "substantial evidence" so as to support a factual determination on an issue which must be proved by clear, cogent and convincing evidence, even though such evidence would support a finding when the degree of proof required only a preponderance of evidence.* The evidence contradicts J. Patton's testimony. (Incorporated by reference as fully set forth are the arguments in the original and reconsideration brief filed with the Court of Appeal regarding Miss-statements of J. Patton, Tenant and P. Comer, Plaintiff)

ISSUE FIVE: PLAINTIFF ENGINEER, CORP-OPINING OUTSIDE HIS EXPERTISE:

The trial court erred in accepting Corp's opining as fact. *(Incorporated by reference as fully set forth are the arguments within the Court of Appeals Original and Reconsideration Briefs regarding this matter.)*

Citation: Foundations were not adequately address regarding Plaintiff witness, Corp frequent opining outside his field of expertise. The court erred when it relied on his opining per his testimony especially as believes he is a forensic but he has never taken one course within the area. *164 Wn. 2d 577, State v. Montgomery states: In order to assure evidence is admitted in an orderly fashion and impermissible opinions are not improperly injected into the trial, certain procedures must be followed by trial advocates to lay proper foundations for opinion testimony...."*

ISSUE SEVEN: PLAINTIFF TRIAL EVIDENCE DOES NOT SUPPORT VERDICT.

The tier of facts support per Plaintiff's Personal Sworn Testimony that she "tripped"

and slipped on the Landing Mat as she exited Tenants J. Patton/K. Birdsell residence

front door and stepped off the East landing edge resulting in injury. **P. Comer states:**

1.) **STEPPING OFF EDGE OF LANDING**: "I was here on the landing, right here next to the buses, and I just went to take a step off. And I don't even know, Your Honor, if my foot, if my foot even hit the step or not or if I stepped off the edge of the landing, but that is when I slipped" (RP#151, Line 12-17)
2.) **EGRESS BLOCKED BY J. COMER/J. PATTON**: "Johnny had stepped on the landing, next to I guess, the garage wall. Jerry was on the landing...Johnny was right next to me" (Rt #150 Line 12-15, 23)
3.) **WEATHER: "**It was cold. It was cold." (RP 149 line 11). " Then when we left it was snowing."(RT 170, line 14)

4.) **RAIN GUTTERS:** Counsel asks: "Was there water in the rain gutters.? Plaintiff: NO. (RT page 154, line 12)

5.) **DE-ICER: No,** I never saw Johnny put any de-icer on. (RT 170, line 19)

6.) **LANDING MAT:** Colistro asks Comer: "Where you coming out of the house? P. Comer responds: "Uh-huh (affirmative), and slipped on the, um-on the, ah, landing mat, went down of the first step." (Transcribed court reporter JoAnne L. Schab 6/12/2012, (CP 74-77, Exhibit 9A,B)

7.) **EMERGENCY ROOM REPORT:** Emergency Room Report 12/24/2008 : "The patient is a 54 year old female presenting by ambulance arriving at 2200 hours stating that she tripped and fell down two stairs...per Mark Olson, MD" (Exhibit 22)

Additional Tier of Facts Evidence:

8. DOORWAY TRIP OF P. COMER PER TENANT J. PATTON: J. Patton states at trial: "Patty was just going through the doorway...that is when it happened." (RP: 109 line 15-20)

9. AFFIDAVIT WILLIAM FASSETT, WSU PHARMACOLOGY PROFESSOR: *"Based on the information provided, interpreted according to my education, training and experience, it is more likely than not that certain of the Plaintiff's medications when consumed in combination with or without alcohol would have rendered the Plaintiff unsteady, with impaired sensory responses, and impaired judgment that would more likely than not have contributed to the slip, fall and initial injury to her leg.*

10. EXPERT REPORT APPLIED COGNITIVE SCIENCES, JOELLEN, GILL: *"Regardless of the many factual disputes addressed above, it is my opinion that on the night of Mrs. Comer's slip and fall accident, it was Mr. Patton's responsibility, and not Mrs. Colistro's responsibility, to maintain the walkways free from snow and ice, particularly as this was not a sudden unexpected change in weather conditions, but rather a predicted and ongoing weather pattern. In addition, Mrs. Comer was present at the subject property in response to an invitation by Mr. Patton. That is Mr. Patton knew that his guests would be using the subject walkway to enter and exit the home and knew of the propensity for ice to form on the subject walkway; it was his responsibility to ensure the walkway was in a safe condition"*

11 EXPERT S. C. MALONEY, PROFESSIONAL ENGINEER: *"With a reasonable degree of certainty, based upon the above stated observations; it is my opinion that the walkway, steps and landing meet the requirements of current and past building codes. Marks and discoloration areas result from minor surface wear, and are not the result of roof discharge erosion. The landing, steps and walkway are maintained in good and serviceable condition, and are not in need of repair. The landing, steps and walkway is not dangerous or unsafe." (Exhibit19)*

Citation: 163 Wn. 2d 558, Pardee v. Jolly "Substantial evidence is a sufficient quantum of evidence in the record to persuade a reasonable person that the finding is true. If substantial evidence supports a finding of fact, the reviewing court should not substitute its judgment for that of the trial court."

There is no valid evidence to support the Trial Courts Conclusion that the rain gutter was defective at the time of Plaintiff's injury. Mrs. Comer did not "trip" in or around the rain gutter rather she tripped exiting the front door on a landing mat and stepped off the east edge of the landing. Mrs. Comer stated at trial when asked if there was water in the rain gutters, she said

VI. CONCLUSION

The defendant was denied the right to a fair trial and due process which are the corner stones that give strength to this great nation paid for and secured through human sacrifice of not only our forefathers but all that serve this nation for life, liberty and the pursuit of happiness. This cause pales in the light of the severe case before the Supreme Court. However, the trial court abused its discretion by relying on miss-statement of facts and miss-interpretation of law and civil rules. The Defendant very respectfully request this case be dismissed or in the alternative a new fair trial with evidence and witnesses. (CR60(1),(3),(4),(5) (11)-Relief from Judgment).

Citations: 1) 75 Wn. 2d 502, Harry W. Church, Respondent, b. Daniel West
2.) The State of Washington, Appellant, v. Earl Clifford Taylor, et al.
3.) 97 Wn. 2d 30, 640 P.2d 716 Seattle Timess Co. v. Ishikawa
4.) The State of Washington, Respondent v. Thomas Stanley Suleski 67 Wn. 2d 45
5.) 67 Wn. 724, The State of Washington v. Willie Peele
6.) 100 Wn. 2d 757, 675 P.2d 1213 State v. Davenport
7.) 60 Wn.2d 254, Mike Donovic, et al v. Glenn Anthony
8.) 163 Wn. 2d 558, Pardee v. Jolly
9.) Karlberg v. Otten, 167 Wn. App. 522

"The mission of the Washington Supreme Court is to protect the liberties guaranteed by the constitution and laws of the state of Washington and the United States; impartially uphold and interpret the law; and provide open, just and timely resolution of all matters "

Respectfully Submitted: **Dated 5/16/2014**

Sharon A. Colistro

Sharon A. Colistro, Peitioner

VII Appendix

1.) 5/27/2014 Letter Renee Townsley, Court of Appeals

2.) 5/27/2014 Unpublished Opinion Comer v. Colistro

3.) 4/17/2014 Letter Renee Townsley, Court of Appeals

4.) 4/17/2014 Order denying Motion for Reconsideratin

Renee S. Townsley
Clerk/Administrator

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March 27, 2014

Sharon Colistro
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CASE # 310582
Patricia Comer v. Wayne Colistro, et ux, et al
SPOKANE COUNTY SUPERIOR COURT No. 092034006

Counsel and Ms. Colistro:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:dlz

c: Honorable Linda G. Tompkins
E-Mail

FILED
March 27, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

PATRICIA COMER, a married woman, Respondent, v. WAYNE COLISTRO and SHARON COLISTRO, individually and as husband and wife; and, JOHN DOES I through V, JANE DOES I through V; and DOE ENTITIES I through V, Appellants.	)	No. 31058-2-III UNPUBLISHED OPINION

FEARING, J. — On December 24, 2008, Patricia Comer slipped and fell outside a residence Sharon Colistro owned in Spokane, Washington. After a bench trial, the trial court found Colistro negligently failed to maintain the rain gutters at the residence. Colistro's failure, the court concluded, caused ice to form on the landing, which caused Comer to fall. The trial court entered judgment in favor of Comer.

Colistro appeals, assigning 23 errors, raising 11 issues, and requesting a new trial based on new evidence. Many of the assignments involve the trial court's decision to exclude evidence Colistro sought admitted in violation of discovery rules and the court's scheduling order. She also challenges findings of fact and conclusions of law. Finally,

Colistro argues service of process was insufficient. We affirm all rulings of the trial court.

FACTS

Johnny Patton and Kristina Birdsell leased a duplex at 2928 E. Grace, in Spokane, Washington (Grace Residence). On December 24, 2008, they invited Jerry and Patricia Comer to their home for Christmas Eve dinner. Spokane experienced extraordinary snowy weather that day. After dinner, Patton and the Comers exited the residence. Despite the weather, Patricia Comer wore no boots. As she exited, she fell outside the front door, displacing her left tibia and fracturing her fibula. The court found Comer "slipped on ice and/or snow." Clerk's Papers (CP) at 821.

On July 31, 2009, Patricia Comer filed suit against the owners of the Grace Residence, Wayne (now deceased) and Sharon Colistro. In addition to the complaint, Comer filed Returns of Service, indicating Sharon and Wayne Colistro were served with the complaint on July 16. On October 9, after the Colistros failed to respond, a court signed an order of default against them.

Sharon Colistro claimed she was not served with process and did not know, until July 7, 2011, that Patricia Comer filed suit against her. She further claimed her husband died in 2000, such that service of process on him in 2009 was not possible. When she learned of the suit, she recorded an interview with Comer. Colistro then moved to set aside the order of default.

On September 1, 2011, the court granted Sharon Colistro's motion to vacate the order of default "based on irregularities" in the service of the complaint. CP at 190. The court did not identify the irregularities of service. The court scheduled the trial date for March 19, 2012. Comer's counsel personally served Colistro on September 1, 2011, with another copy of the summons and complaint.

On October 7, 2011, Patricia Comer, through counsel, sent Sharon Colistro interrogatories requesting Colistro disclose the names, qualifications, and opinions of any experts she planned to call to testify. Colistro responded that she did not have that information at the time, but would forward it when she did.

On January 12, 2012, Sharon Colistro moved for a six-month extension of the trial date to secure assistance of counsel and continue discovery. On January 20, the trial court denied Sharon's motion for lack of "good cause." CP at 199.

On February 9, Mary S. Murphy appeared on behalf of Sharon Colistro. On February 10, the court amended the civil case scheduling order to permit Murphy additional time to prepare. The scheduling order set April 23 as the deadline for discovery. The court established a deadline for hearing dispositive pretrial motions and for exchanging witness lists, exhibit lists, and documentary exhibits as May 25. The scheduling order set trial for June 25.

On March 5 and April 3, Sharon Colistro disclosed testifying witnesses, which included lay witnesses Kristina Birdsell and Johnny Patton, and expert witnesses Richard

Fassett, Ph.D. Pharmacologist; Joellen Gill, M.A. Applied Cognitive Sciences; and S.C. Maloney, Engineer. Because Patricia Comer had yet to receive any information about the opinions or qualifications of expert witnesses, as she had requested in earlier interrogatories, her counsel sent opposing counsel a letter requesting this information for the second time.

On May 24, more than a month after the discovery cutoff, Sharon Colistro sent Patricia Comer affidavits from Johnny Patton and Kristina Birdsell. On May 29, and after the cutoff prescribed by the scheduling order, Colistro sent Comer the reports and affidavits from experts Richard Fassett, Joellen Gill, and S.C. Maloney. Colistro possessed and could have submitted the affidavits, interrogatories, and expert reports, other than Gill's report, before the scheduling order deadline.

On June 5, and after the cutoff prescribed by the scheduling order, Sharon Colistro moved for summary judgment. On June 11, Patricia Comer moved "to Strike Defendant's Answer to [her] Complaint and Re-Enter Default or for other sanctions," because of Colistro's repeated violations of the scheduling order and rules of discovery. CP at 237.

On June 19, Sharon Colistro submitted a 500-page "AFFIDAVIT & SUPPLEMENTAL INFORMATON FOR MOTION OF DISMISSAL OR, IN THE ALTERNATIVE, SUMMARY JUDGMENT," which included both information she previously submitted to the court and information she never disclosed, the latter including

a transcript of the 2011 recorded interview of Patricia Comer. CP at 298. The court denied both the motion for summary judgment and dismissal as untimely.

On June 25, 2012, at the beginning of trial, the court entertained a motion in limine brought by Patricia Comer. Because Sharon Colistro violated the scheduling order and discovery rules, the court excluded:

- The "interrogatories" and affidavits of Johnny Patton and Kristina Birdsell;
- The conversation Colistro recorded with Comer;
- All material included in Sharon's 500-page affidavit; and
- Testimony of all but one of Sharon's expert witnesses.

Upon trial, the trial court found poor conditions and poor maintenance of rain gutters at the Grace Residence caused Patricia Comer to fall. Both Comer's and Sharon Colistro's experts "established that the rain gutters were displaced, leaky[,] and corroded." CP at 822. Comer's expert "further testified that the moss buildup in the rain-gutters over the garage would cause a blockage, preventing water from reaching the downspout, which would cause the gutters to backup and overflow. This in turn would allow leaking water to fall onto the front walkway where it would fall and freeze." CP at 822. Both Comer's and Colistro's experts testified that the corrosion and moss in the gutters were present for a significant amount of time prior to Comer's fall. Therefore, the court found, Colistro "had a substantial time period in which to repair the rain gutters." CP at 822. The trial court also found that tenant Johnny Patton informed Colistro "three (3) weeks prior to the incident that there was an issue with the corner rain-gutters near the fireplace coming down from excess ice and snowpack on the roof that needed to be

addressed." CP at 822. Colistro disagreed that she was informed of any problem with the rain gutters. The court found that the rain gutters were structural components of the residence, which Sharon Colistro was responsible to maintain.

The trial court concluded that Patricia Comer was a social guest, to whom Sharon Colistro owed a duty to use ordinary care. The court also concluded Colistro had actual or constructive knowledge of the dangerous condition, the neglected rain gutters. When she failed to remedy the problem in a reasonable time, her conduct fell below the ordinary care standard she owed to Patricia Comer. The trial court concluded that Patricia Comer was also negligent and adjudged Comer to be 30 percent at fault and Colistro to be 70 percent at fault. The trial court awarded Comer $39,211.58.

ANALYSIS

Sharon Colistro's assignments of error may be organized into five issues:

(1) Whether the trial court had jurisdiction because of lack of service upon her?
(2) Whether the trial court erred when it concluded her tenants could permit third-parties to inspect their residence?
(3) Whether the trial court abused its discretion when it excluded some of her evidence and admitted some of Patricia Comer's evidence?
(4) Whether substantial evidence supports the findings of fact she challenges?
(5) Whether this court should grant her a new trial because of newly discovered evidence?

JURISDICTION

After obtaining the order vacating the default judgment and being served with process by counsel on September 1, 2011, Sharon Colistro did not again contend, before

the trial court, that the court lacked jurisdiction for want of service. For this reason, Patricia Comer contends Colistro may not assert lack of jurisdiction on appeal. Nevertheless, RAP 2.5(a) permits a party to claim lack of trial court jurisdiction for the first time on appeal.

Reaching the merits of the argument does not harm Patricia Comer. Colistro contends service is defective because she was not served with the summons and complaint the first time within 90 days of the filing of the complaint in violation of RCW 4.16.170. In turn, she argues the second service was defective because Comer did not file the summons and complaint anew within 14 days in violation of CR 3(a). Colistro misreads the statute and the court rule.

RCW 4.16.170 states:

> For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint . . . . If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations.

The statute is "for the purpose of tolling any statute of limitations." RCW 4.16.170. Colistro does not contend the statute of limitation expired before Patricia Comer filed the complaint and served her. In this case, the statute of limitations is three years. RCW 4.16.080. Comer fell on December 24, 2008. She filed the complaint on

July 31, 2009. Colistro admits that she was personally served on September 1, 2011. As we wrote in *Hansen v. Watson*, 16 Wn. App. 891, 892-93, 559 P.2d 1375 (1977), "Since both service and filing were accomplished before the statutory period of limitation had expired, . . . the issue of tolling [the limitation] period does not arise." "Under these circumstances it is immaterial that the service and filing were not accomplished within 90 days of each other."

CR 3(a) reads, in relevant part:

> Except as provided in rule 4.1, a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint. Upon written demand by any other party, the plaintiff instituting the action shall pay the filing fee and file the summons and complaint within 14 days after service of the demand or the service shall be void.

The rule benefits Colistro none since the summons and complaint was filed with the court before service in September 2011.

The trial court properly exercised jurisdiction.

INSPECTION OF GRACE RESIDENCE

Sharon Colistro assigns error to the use of evidence gathered from an inspection of the Grace Residence that her tenants, not she, allowed. The evidence was used by Patricia Comer's expert in forming opinions.

In support of her argument that she, as the landlord, needed to consent to an inspection, Colistro cites *State v. Jesson*, 142 Wn. App. 852, 176 P.3d 549 (2008), a Fourth Amendment case. Nevertheless, no public official entered the Grace residence.

Entries onto private property do not rise to constitutional issues unless executed by government agents. *See, e.g., United States v. Jacobsen*, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984) (court refused to suppress evidence found by private freight carriers because they were not state actors); *State v. McWatters*, 63 Wn. App. 911, 822 P.2d 787 (1992) (court refused to suppress evidence because paramedic who found evidence was not acting as a state agent). This case does not implicate state or federal constitutional search issues, but, at worst, is a violation of discovery rules.

Sharon Colistro also asserts that Patricia Comer violated CR 34. CR 34(a) and CR 34(a)(2) states, "Any party may serve on any other party a request . . . to permit entry [upon] designated land or other property [in *the possession or control* of the party upon whom the request is served for the purpose of inspection]." Tenant Johnny Patton testified that he had exclusive possession and control of the Grace Residence. He also testified that he permitted Comer's expert to inspect the rain gutters attached to the Grace Residence. Therefore, the trial court correctly found Patricia Comer did not violate CR 34.

In a separate assignment of error, Sharon Colistro contends that, under the lease agreement with Johnny Patton, she had the exclusive right to permit inspection. Colistro raises this issue for the first time on appeal. Thus, we decline to address this issue. RAP 2.5.

Even if this court decided to review the issue, it would find neither the Landlord Tenant Act, ch. 59.18 RCW, nor the lease give Sharon Colistro the *exclusive* right to permit inspection of her tenant's property. The lease states the "[l]andlord reserved the right of access to the premises for the purpose of . . . inspection." Br. of Appellant at 28. The language does not suggest the landlord has the exclusive right to permit inspection. The Landlord-Tenant Act similarly gives landlords the right to enter premises for inspection purposes, but it is not an exclusive right. RCW 59.18.115. In the past courts have found tenants' permission to third-parties to inspect their premises overrides the landlord's written refusals. *Cranwell v. Mesec*, 77 Wn. App. 90, 104, 890 P.2d 491 (1995). Landlords' minimal expectation of privacy in common areas makes it unreasonable to allow them to veto a tenant's consent to an inspection. *Mesec*, 77 Wn. App. at 105 (citing *State v. Cantrell*, 124 Wn.2d 183, 191, 875 P.2d 1208 (1994)).

EVIDENTIARY EXCLUSIONS

Sharon Colistro contends the trial court abused its discretion when it excluded, because of late disclosure, the conversation she recorded with Patricia Comer; her 500-page affidavit; and the interrogatories she served on eye witnesses Johnny Patton and Kristina Birdsell. Colistro also alleges the court violated her freedom of speech when it excluded this evidence.

Patricia Comer submitted interrogatories to Sharon Colistro twice, once when she represented herself, and again to her counsel, after she retained one. After the cutoff

prescribed by the court's scheduling order and in violation of CR 33, Colistro sent reports and affidavits of experts S.C. Maloney, Joellen Gill, and William E. Fassett. A week before trial, Colistro submitted a 500-page long "AFFIDAVIT & SUPPLEMENTAL INFORMATION FOR MOTION OF DISMISSAL OR, IN THE ALTERNATIVE, SUMMARY JUDGMENT," which included a transcript of a 2011 conversation she recorded with Comer. CP at 298. Colistro never previously disclosed the transcript. Colistro repeatedly and significantly violated discovery rules and the court's scheduling order. She possessed all the evidence she tardily sought to admit, except for Joellen Gill's expert report, before the discovery cutoff.

Colistro excuses her late delivery of the transcript from the recorded conversation on the ground she only learned how to operate the recorder 10 days before trial. She fails to disclose how she recorded the Comer conversation if she did not know how to operate the recorder, why she did not learn to operate the recorder earlier, how she finally learned its operation 10 days before trial, why she did not earlier seek the assistance of someone to operate the device, why she did not earlier disclose the existence of the recording despite her inability to operate the recording, or why she did not earlier voluntarily turn over the recording to the court or Comer to play on their own.

CR 37(d) permits a court to exclude evidence as a sanction when a party violates discovery rules. LAR 0.4.1(g)(3) permits a judge to impose such sanctions as justice requires when its scheduling order is disregarded. In fashioning a sanction, the trial court

has "vast discretion." *Allied Fin. Serv. Inc., v. Mangum*, 72 Wn. App. 164, 864 P.2d 1, 871 P.2d 1075 (1994) (citing *Lampard v. Roth*, 38 Wn. App. 198, 201, 694 P.2d 1353 (1984)). Sharon Colistro repeatedly violated both discovery rules and the court's scheduling order. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Hoskins v. Reich*, 142 Wn. App. 557, 566, 174 P.3d 1250 (2008). "A trial court abuses its discretion if its decision 'is manifestly unreasonable or based upon untenable grounds or reasons.'" *State v. Lamb*, 175 Wn.2d 121, 127, 285 P.3d 27 (2012) (quoting *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995)). Here the trial court did not abuse its discretion.

An additional reason lies to exclude the interrogatory answers of tenants Johnny Patton and Kristina Birdsell. CR 33 only allows the submission of interrogatories to parties—not to nonparties. Colistro cites no authority that would permit her to send interrogatories to nonparties, because she cannot. "Interrogatories . . . cannot be directed to a nonparty." 3A KARL B. TEGLAND, WASHINGTON PRACTICE SERIES 766 (6th ed. 2013). Discovery from a nonparty should ordinarily be sought by means of a deposition under CR 30. TEGLAND, *supra* at 766.

Even assuming the trial court committed error by excluding Johnny Patton and Kristina Birdsell's interrogatory answers, the error was harmless. An error is harmless if the outcome of the proceeding would have been the same even if the error had not occurred. *State v. Jackson*, 102 Wn.2d 689, 695, 689 P.2d 76 (1984). Patton and Birdsell

testified at trial. At trial, Sharon Colistro was free to elicit the statements they made in response to her interrogatories. Because the outcome would have been the same even if the trial court had admitted the interrogatories, any error was harmless.

Last, Sharon Colistro asserts the trial court violated her freedom of speech when it excluded her evidence. To support this contention she offers *United States v. Eichman*, 731 F. Supp. 1123, 1127 (D.C. Cir. 1990), which explains the federal constitution's First Amendment protects the expression of viewpoints some find offensive or disagreeable. She offers no support for the proposition that evidentiary rules violate the First Amendment. This court will not address an issue a party fails to support with "adequate, cogent argument and briefing." *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 160, 795 P.2d 1143 (1990) (citing *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989)).

EVIDENTIARY ADMISSIONS

Sharon Colistro assigns error to the trial court's admission into evidence of Dr. Ernest Corp's recommendations and conclusions and Dr. David Schenker's perpetuation report. The general rule is that issues not raised in the trial court may not be raised for the first time on appeal. *See* RAP 2.5(a); *State v. Moen*, 129 Wn.2d 535, 543, 919 P.2d 69 (1996). Sharon Colistro did not challenge the admissibility of Ernest Corp's recommendations and conclusions or David Schenker's perpetuation report at trial. Thus, this court declines to review them now.

Next Sharon Colistro assigns error to the trial court's permitting Patricia Comer's civil engineering expert, Dr. Corp, to testify that rain gutters at the Grace Residence were corroded and unsealed, that moss older than four weeks obstructed the gutters, and that the gutters leaked onto the tenant's walkway. The assignment is based upon the alleged lack of expertise of the witness and his reliance upon hearsay.

In her brief, Sharon Colistro lists 6 objections her counsel registered at trial and 14 statements she alleges on appeal are hearsay or opinions Dr. Corp made outside his field of expertise. The 14 latter statements were not challenged at trial. Thus, we decline to review these statements. *Moen*, 129 Wn.2d at 543.

We address the six objections raised at trial and conclude the trial court did not err in any of its rulings. Before Dr. Ernest Corp took the stand, Sharon Colistro objected to any reference Corp might make to meteorology. Since Corp had yet to testify, the trial court explained, "[c]ertainly counsel, you may object if, in fact, that comes into the testimony of the witness. I am not able to provide an anticipatory ruling until the issue is actually before me." 2 RP at 228. Counsel never later objected perhaps because Corp never opined about meteorology.

Comer's counsel asked Dr. Ernest Corp about a conversation he had with Patricia Comer. Colistro objected and Comer's counsel shied away from the question, never to return. Even if counsel returned to the line of inquiry, ER 703 would have permitted the testimony. Corp was asked about his conversation with Comer to lay a foundation for his

expert opinion. Experts are allowed to base their opinions on the testimony of others, even the plaintiff for whom they are testifying. *Carter v. Massey-Ferguson, Inc.*, 716 F.2d 344 (5th Cir. 1983) (plaintiff's expert was properly allowed to express an opinion on the cause of an accident on the basis of the plaintiff's testimony).

Sharon Colistro objected to Dr. Ernest Corp's testimony that he observed moss in the rain gutter four years after the accident, and contends the testimony is outside his field of expertise. Colistro's counsel, however, objected because the testimony was "irrelevant." 2 RP at 246. The trial court never had the opportunity to consider whether Corp testified outside his field of expertise. We will decline to review an issue raised for the first time on appeal. *Moen*, 129 Wn.2d at 543. A trial court should be given an opportunity to address whether testimony is outside the scope of the expert's expertise, before the testimony is challenged on appeal.

The testimony was likely permissible anyway, since an observation of moss need not be based upon expertise. The testimony was not Corp's opinion as an expert, but rather an observation that he relied on to form his expert opinion. As such it was permissible under ER 703, as a basis for his expert opinion. *State v. Roberts*, 142 Wn.2d 471, 522, 14 P.3d 713 (2000) (expert's personal observations from photographs were permissible).

Finally, Sharon Colistro objects to Dr. Ernest Corp's testimony regarding what Patricia Comer learned from Johnny Patton. At trial, Colistro objected to the testimony

as hearsay, and the court sustained the objection. Colistro should not complain of a ruling in her favor.

SUBSTANTIAL EVIDENCE

Sharon Colistro contests three of the trial courts findings of fact. Appellate courts review contested findings for substantial evidence. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010) (citing *In re Marriage of Schweitzer*, 132 Wn.2d 318, 329, 937 P.2d 1062 (1997)). "Evidence is substantial if it is sufficient to persuade a fair-minded, rational person of the declared premise." *Cokeley*, 168 Wn.2d at 631 (citing *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)). When there is conflicting evidence, courts defer to the trier of fact. *Pilcher v. Dep't of Revenue*, 112 Wn. App. 428, 435, 49 P.3d 947 (2002). Courts give "the party who prevails in the trial court the benefit of all reasonable inferences from the evidence that favor the court's findings." *Barker v. Advanced Silicon Materials, LLC, (ASIMI)*, 131 Wn. App. 616, 626-27, 128 P.3d 633 (2006) (citing *Weyerhaeuser v. Tacoma-Pierce County Health Dep't*, 123 Wn. App. 59, 65, 96 P.3d 460 (2004)).

Sharon Colistro objects to the trial court's finding that rain gutters are a structural building component. Colistro contends structural building components "are incorporated into the overall building structural system by a designer." Br. of Appellant at 30. She argues rain gutters are attachments to the building; they are not intricate to the overall integrity of the building. According to Colistro, because rain gutters are not structural

building components, it is the responsibility of the tenant to maintain. Nevertheless, substantial evidence supports the court's finding to the contrary.

Johnny Patton, the tenant, testified the lease required the landlord to maintain structural components, and that Colistro and he discussed rain gutters as being structural components within the terms of the lease. At trial, Sharon Colistro even conceded rain gutters are a structural component for which she, as landlord, was responsible. Comer asked Colistro, "[a]nd the rain gutter would be one of those structural components?" 3 RP at 378. Colistro responded, "Yes." 3 RP at 378.

Sharon Colistro invites us to consider the "professional building meaning for structural building components," though she identifies no text from which she removes this definition. Br. of Appellant at 30. Nor did she present any citation from a text at trial. We decline to review evidence not in the trial record and for which there is no authority. *See* RAP 9.1 and RAP 9.11.

Sharon Colistro next assigns error to the trial court's finding that Johnny Patton notified Sharon Colistro that the rain gutters were falling. Substantial evidence supports this finding, however. Patton testified that he told Colistro the rain gutters were falling from the roof because of the weight of ice. The only testimony that contradicts Patton's word is Colistro's testimony. When there is conflicting evidence, courts defer to the trier of fact, *Pilcher*, 112 Wn. App. at 435, and give all reasonable inferences to the prevailing party, Patricia Comer. *ASIMI*, 131 Wn. App. at 626-27. Thus, substantial evidence

supports the trial court's finding that Colistro had actual notice that the rain gutters required maintenance.

Even if the tenant did not notify Sharon Colistro of the need for maintenance, the trial court found she possessed constructive notice, and therefore, the finding of actual notice is irrelevant and harmless. An error is harmless if the outcome of the proceeding would have been the same even if the error had not occurred. *Jackson*, 102 Wn.2d at 695. Both Patricia Comer's and Sharon Colistro's "experts testified that the corrosion and [the] moss in the rain gutters would have been . . . discoverable by the defendant, SHARON COLISTRO, who would have had a substantial time period in which to repair the rain gutters." CP at 822. Because she had constructive notice, Colistro cannot prove the outcome of the proceeding would have been different.

Next, Sharon Colistro assigns error to the trial court's finding that Patricia Comer fell on ice when exiting the Grace Residence. Colistro contends Comer changed her stories between the time Colistro tape recorded her and the trial. We do not know, however, the content of the recording since the trial court excluded the recording because of its untimely production. Records from the hospital corroborate the testimony of Comer that she slipped on ice accumulated on the landing at the residence. Because all the facts admitted support Comer's version of events, substantial evidence supports the trial court's finding.

NEW TRIAL

Finally, Sharon Colistro contends the recording she made of Patricia Comer is new and that she discovered new evidence that the meteorology equipment at Spokane's Felts Field was faulty. Presumably weather data from Felts Field was used to show icy conditions. She asks this court to grant her a new trial under "Rule 7.5(a)(3), (5), (6), (7), and (8)." Nevertheless, there is no CR or RAP 7.5. Colistro appears to be referring to CrR 7.5 "NEW TRIAL." Since she did not suffer a criminal trial, this rule does not apply.

CR 59 is the civil rule that permits a superior court to grant a new trial for newly discovered evidence. CR 59. A Rule 59 motion, however, must be filed within10 days of the judgment in superior court. CR 59(b). Motions filed after 10 days are untimely and need not be considered. *Griffin v. Draper*, 32 Wn. App. 611, 649 P.2d 123 (1982). The trial court entered its judgment on August 1, 2012. Colistro did not request a new trial until she filed her appellant's brief in February of 2013, and the request came in the brief. Not only is her request untimely, but she filed it in the wrong forum. Motions for a new trial must be filed in superior court. RAP 7.2(e).

If we were to address the merits of Sharon Colistro's motion for a new trial, the motion would also fail. Newly discovered evidence must be the type that could not have been discovered with reasonable diligence. CR 59(a)(4). A new trial will not be granted on the ground of newly discovered evidence when the moving party did not use due

diligence to discover the evidence. *Wick v. Irwin*, 66 Wn.2d 9, 13, 400 P.2d 786 (1965). Colistro seeks to admit (1) the recorded conversation she possessed since July 2011 and (2) evidence that the equipment at Felts Field malfunctioned in December 2008. The recording is not new evidence. She fails to show that, with reasonable diligence, she could not have earlier discovered that the equipment at Felts Field failed. We decline to grant Sharon Colistro a new trial because her motion is untimely, filed in the wrong forum, and does not meet the legal test established in CR 59.

CONCLUSION

We affirm all trial court rulings and deny Sharon Colistro a new trial.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be field for public record pursuant to RCW 2.06.040.

Fearing, J.

WE CONCUR:

Brown, J.

Korsmo, C.J.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

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April 17, 2014

Sharon Colistro
East 8319 South Riverway
Millwood, WA 99212

Mark J King, IV
Craig Swapp & Associates
16201 E Indiana Ave Ste 1900
Spokane Valley, WA 99216-6031
markkingiv@msn.com

CASE # 310582
Patricia Comer v. Wayne Colistro, et ux, et al
SPOKANE COUNTY SUPERIOR COURT No. 092034006

Counsel and Ms. Colistro:

Enclosed is a copy of the Order Denying Motion for Reconsideration.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a Petition for Review, an original and a copy of the Petition for Review in this Court within 30 days after the Order Denying Motion for Reconsideration is filed (may be filed by electronic facsimile transmission). RAP 13.4(a). The Petition for Review will then be forwarded to the Supreme Court.

If the party opposing the petition wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service.

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:dlz
Enclosure

FILED
APRIL 17, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

PATRICIA COMER, a married woman, Respondent, v. WAYNE COLISTRO and SHARON COLISTRO, individually and as husband and wife; and, JOHN DOES I through V, JANE DOES I through V; and DOE ENTITIES I through V, Appellants.	)	No. 31058-2-III ORDER DENYING MOTION FOR RECONSIDERATION

The Court has considered appellant Sharon Colistro's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of March 27, 2014, is denied.

DATED: April 17, 2014

PANEL: Judges Brown, Korsmo, Fearing

FOR THE COURT:

LAUREL H. SIDDOWAY
CHIEF JUDGE

EXHIBITS TABLE OF CONTENTS	**Court Record Number**
1-A) Chronology of Events	CP 1-78
1-B) Mark Kings initial agreed service 9/1/2011	CP 34, 73-74,
2) Picture Landing 2928 E. Grace	CP 71-74
3) Picture resident w/snow 12/26/2008, Spokane	CP 71-74
4) Picture 5 feet of snow-Spokane, Wa. 12/29/2008	CP 71-74
5) National Climate Data December 2008	CP 71-74
6) Landing mat & natural occurring snow @ Grace	CP 71-74
7A-C) Spokane's Executive Declaration Emergency	CP 71-74
8) J. Holcomb, Meteorologist report @ freezing 12/12-27, 2008	CP 71-74
9A-B) Verbatim transcript P. Comer 7/13/2011	CP 71-74
10) Emergency room report: P. Comer Tripped	CP 71-74
11) Repairs w/ dates @ 2928 E. Grace	CP 71-74
12) Defendants exhibits not admitted @ trial D-102-119	CP 77& Exhibit Log
13) Scheduling Order	CP 43
14A-E) Trial Court Sanctions	RT-37-42
15A-F) Motion for Summary Judgment	CP 57
16) Fax cover sheet Murphy to King 5/29/2012	CP 71-74
17A-D) William Fassett. PhD, Pharmacology report	CP 71-74
18A-F) JoEllen Gill, Applied Cognitive report	CP 71-74
19A-B) S.C. Maloney, Civil Engineer Report	CP 71-74
20A-B) S. Edward Bosely, Meteorology reports	CP 71-74

EXHIBITS TABLE OF CONTENTS	**Court Record Number**
21) J. W. Colistro, declaration	CP 71-74
22A-B) Gary McDonald declaration	CP 71-74

EXHIBIT ONE: CHRONOLOGY OF EVENT

1.) *On July 7th, 2011 a motion for damages was left on Defendant's Colistro's porch prepared by Council King for his client Patricia Comer, Plaintiff. The summons and complaint were filed on 7/31/2009 . An order for default was entered on 10/09/2009. (CP 1, 7)*

2.) *On 7/13/2011, Mrs. Colistro visited Patricia Comer at her home. Mrs. Colistro requested to legally record Mrs. Comer's comments per RCW 9.73.030(1) which Mrs. Comer consented to. She stated on 12/24/2009 that she slipped on the landing matt while exiting the front door of John Patton and Kristina Birdsell leased premise at E. 2928 Grace, Spokane, Wa. 99207, owned by Mrs. Colistro. Mrs. Comer responds to the questions: "**You were coming out of the house?" Mrs. Comer states: "uh-huh (affirmative). And slipped on the, um-on the, ah, landing mat, went down on the first step**." Professional Court Reporter JoAnne L. Schab transcribed recording on 6/12/2012. (CP 71-74, Exhibit 14)*

3.) *On 7/18/2011, Mrs. Colistro filed a Petition for Relief of Default Judgment under cause No. 2009-02-03400-6. (CP 13) addendum on 7/20/2011. (CP 15)*

4.) *On 09/01/2011 Superior Court entered an order vacating the Default Order citing "irregularities of service." Plaintiff's Counsel submitted two affidavits claiming Mr. and Mrs. W. J. Colistro were served with a summons and complaint on 7/2009. However, Mr. Colistro demis was 1/23/2000 (nine years earlier) and Mrs. Colistro was employed out town during the alleged service. (CP1,7, 31, 71-74)*

5.) *On 9/01/2011 following the Default Hearing Plaintiff's Counsel King and Defendant Colistro agreed in writing that 9/01/2011 would be the date of the first and only service of the summon and complaint to defendant Colistro. Per agreement, on 9/20/2011 Defendant filed a response to the Complaint. (CP 34, Exhibit 1). Neither during the two year period from the filing date with the court on 7/31/2009 until following the hearing on 9/01/2011 Defendant was **never served nor read a summons and complaint** regarding case number 09-2-03400-6. This fact was referred to orally and in writing before the court at prior hearings and with affidavits served regarding the default hearing. (Cp. 14, 15, 19, 20, 21, 23, 24, 25, 26, 29, 33.) .*

6.) *On 7/22/2011 the Superior Court entered an order setting trial date and pretrial conference and an order setting case schedule. (CP 19, 20) The Superior Court was premature with this scheduling order as Defendant had not received a summon and complaint until after the Default Hearing on 9/01/2011 raising a jurisdiction*

issue.(Exhibit 1) The trial date was set prior to Defendant Colistro obtaining or answering the summon and complaint.(CP 34) The court erred in not following LCR 26 F (a) Status Conference. " In civil cases in which the complaint has been served on any defendant, the court administrator will schedule a status conference, to be conducted by telephone not sooner that 90 days, nor later than 120 days after the complaint is filed, and will give notice thereof to counsel and unrepresented parties who have appeared....(b) Scheduling order...Following the status conference, or upon receipt of a status conference statement agreed to by all parties, the court will issue a Scheduling Order."

7.) *On 2/09/2012 Counsel Mary Susan Murphy entered notice of appearance on behalf of Defendant Colistro. On 3/5/2012 she filed an amended notice of appearance. Counsel Murphy's initial representation was to file a Summary Judgment as this case lacked merit in order to avoid trial stress and financial hardship for the defendant. (CP 41, 47.) On 6/05/2012 Counsel Murphy filed a Motion for Summary Judgment. Defendant Colistro had previously prepared in good faith an affidavit to attach as an addendum to the summary judgment motion which organized and included each and every piece of evidence prepared and approved for trial based on CR 56(b) which states:* ***" A party against whom a claim...is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof."*** *Defendant Colistro filed this affidavit addendum on 6/19/2012. (CP 71-74.)*

8.) *On 6/19/2012 included in the Defendant's affidavit was the official written transcription by a court reporter of Plaintiff's Comer 7/13/2011 conversation with Mrs. Colistro in which she stated she "tripped on the landing mat" which was the proximate cause of her injury. (CP 71-74) Defendant purchased a new small digital recorder which was the only one offered at Walgreen Pharmacy on the morning of 7/13/2011 as her usual "tape recorder" was broken. This digital recorder had a "file lock" in order not to re-record over an existing file which was unknown to Defendant Colistro. Defendant also recorded John Patton, tenant on 7/14/2014. The defendant tried numerous times to locate the recording but was not aware of the locking mechanism. Defendant believed she had failed to record the conversation. A few days prior to the 6/15/2012 the digital recorder was presented to two computer experts. The Patricia Comer's conversation was discovered locked but not John Patons. The recording was immediately transcribed in a written format. A professional compact disc and transcriptions were made for all parties to the litigation and court. (CP 71-74) This is also in accordance with the Interrogatory request to continue supplementing information and Civil Rule CR 26(e)(3) states: "A duty to supplement responses may be imposed by other of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses."*

*Defendant Colistro **agreed** with Plaintiff Counsel King to supply him with copies of all her evidence as it became available prior to trial at her deposition.*

9.) On 6/11/2012 Plaintiff's Counsel King filed a Motion Limine and argued it prior to commencement of trial on 6/25/2012. (CP 67) Counsel Kings known miss-statement of material facts regarding alleged violation of the scheduling order prejudiced the trial court against Defendant. The Superior Court based on erroneous statements of Counsel King ruled that each and every piece of evidence in Defendant's possession including expert reports which were included in her personal affidavit filed 6/19/2012 which was to assist with the Summary Judgment was barred from trial as well as all of her expert witnesses and lay witnesses except one. This ruling was minutes before the commencement of trial. This ruling was so severe it trampled on the 5th Amendment to the Bill of Rights and prevented a fair, impartial and due process trial. The Court ruled:

> *"None of the, quote, interrogatories to witnesses will be admissible. None of the material that was delivered to the Court or to Mr. King within the last week will be utilized, and the irregularity in the dates between the Maloney, Gill and I believe Fassett reports, date of reports versus service of reports creates a significant doubt as to the validity, reliability and even admissibility of some of the proffered testimony.*
>
> *The Fassett affidavit is by no means an acceptable response to interrogatories, requests for productions, requests for admission, and the effort to contact Mr. Patton and somehow now shift responsibility is not going to be recognized or available, again based on the improper communication.*
>
> *No information received from any of the recordings, the unauthorized recordings may be part of the testimony.*
>
> *The Court then will be recognizing Defense witnesses to include only ...one of the three experts that are listed. (Defendant's lay witnesses were also excluded) (RP 37-42, lines 1-25)*

10. Trial Court evidence was insufficient to support finding of fact and conclusion of law. The Court opinion was based on miss-statement of facts and impeachable testimony.

1-B

Ok'd now 9-20-2011
Date
By Mark King
Mark said time line
starts over as courtesy
20 days to complaint from 9/6/11
Answer
30 day for intrrogatrie
MWK
9/7/11

FILED
JUL 06 2011
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

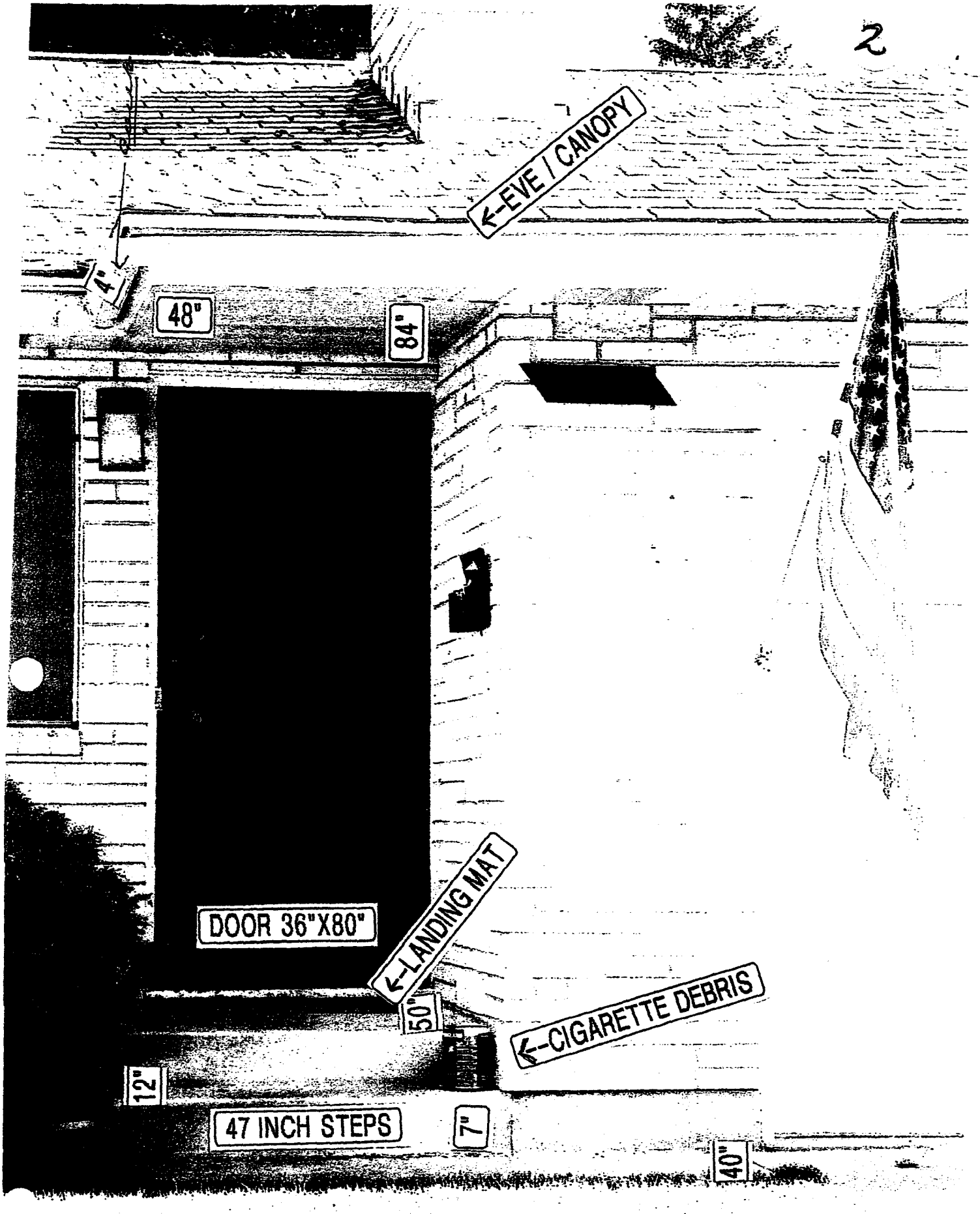
PATRICIA COMER, a married woman, Plaintiff, vs. WAYNE COLISTRO and SHARON COLISTRO, individually and as husband and wife; and , JOHN DOES I through V, JANE DOES I through V; and DOE ENTITIES I through V, Defendants.	Case No.: 09203400-6 MOTION AND DECLARATION FOR DEFAULT JUDGMENT

PLAINTIFF PATRICIA COMER, pursuant to CR 55(b), by and through her attorney of record, MARK J. KING, IV, moves for a Default Judgment against the above-named defendant, SHARON COLISTRO, for failure to Answer and/or otherwise respond to the Summons and Complaint served upon her. An Order of Default was previously entered by the Court on October 9, 2009. This motion is based upon the papers and pleadings on file, the attached Declarations of Mark J. King, IV, Patricia Comer, and David Schenkar, M.D., and attached Exhibits.

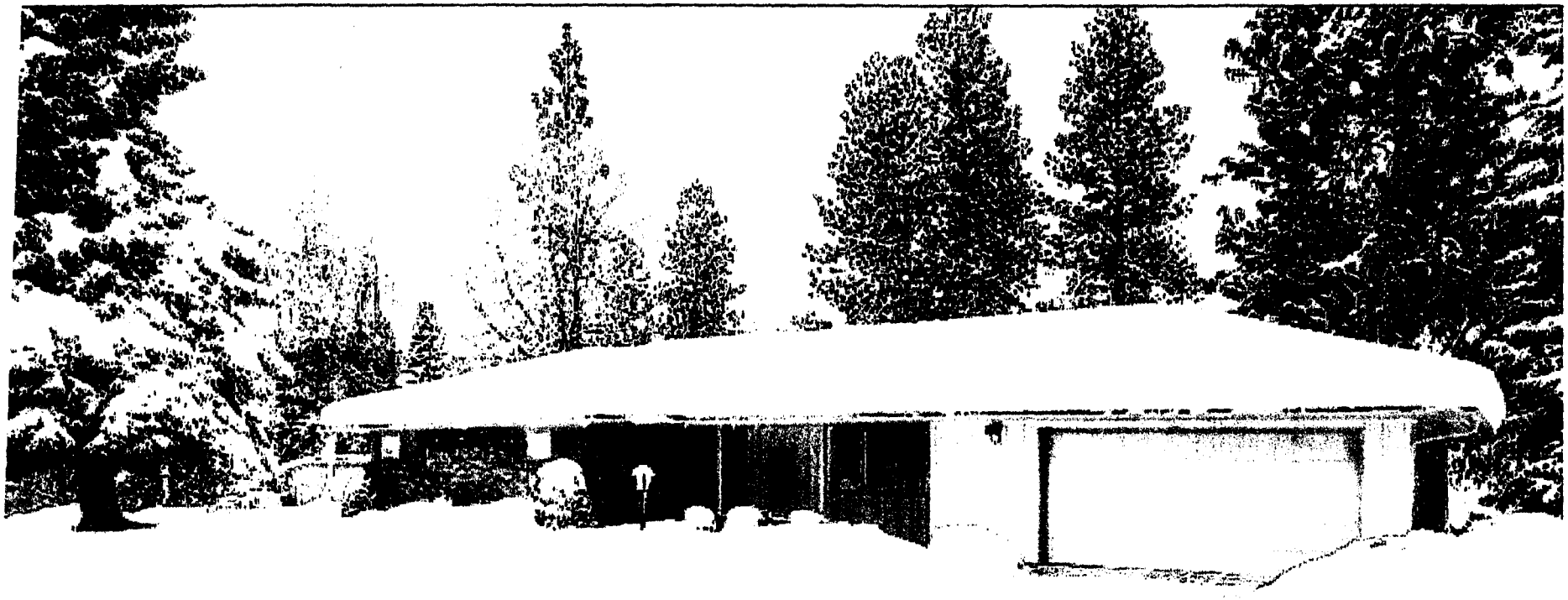
/ / / /

/ / / /

KING LAW OFFICE, PLLC
902 N. Monroe.
Spokane, WA 99201
(509) 252-0010



Canopy above porch 48" wide X 84" deep surrounded by 4" rain gutter.
Canopy dimension with rain gutter 52" Wide X 88" deep.
Door 36" X 80". Rain gutter 2" base 4" top.
Steps 7" high X 47" wide. Plate form 50" deep X 47" Wide
2 exterior risers at front door 1.5"height X 3" deep (one wood, one metal) @3" drop living room to



#2, 12/26/2008 *1618 SPOKANE RESIDENCE

#6,12/29/2008 *1639, SPOKANE, WA

DECEMBER 2008
LOCAL CLIMATOLOGICAL DATA
NOAA, National Climatic Data Center

SPOKANE, WA
SPOKANE INTERNATIONAL AIRPORT (KGEG)
Lat:47 ° 37'N Long: 117° 31'W Elev (Ground) 2353 Feet
Time Zone : PACIFIC WBAN: 24157 ISSN#: 0198-5493

Date	Temperature °F						Deg Days BASE 65°		WEATHER	SNOW/ICE ON GND(IN)		PRECIPITATION ON GND(IN)		PRESSURE (INCHES OF HG)		WIND SPEED = MPH DIR = TENS OF DEGREES							Date
										0400 LST	1000 LST	2400 LST	2400 LST						MAXIMUM 3-SEC		MAXIMUM 2-MIN		
	MAXIMUM	MINIMUM	AVERAGE	DEP FROM NORMAL	AVERAGE DEW PT	AVERAGE WET BULB	HEATING	COOLING		DEPTH	WATER-EQUIV	SNOW-FALL	WATER EQUIV	AVERAGE STATION	AVERAGE SEA LEVEL	RESULTANT SPEED	RES DIR	AVERAGE SPEED	SPEED	DIR	SPEED	DIR	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
01	40	37	39*	9	38	38	26	0	RA DZ FG+ BCFG BR	0		0.0	0.05	27.45	29.97	2.7	20	4.7	18	21	15	21	01
02	40	30	35	5	34	36	30	0	RA DZ FG+ BR	0		0.0	0.14	27.57	30.09	4.1	26	5.5	13	23	12	23	02
03	34	25	30	1	20	27	35	0		0		0.0	0.00	27.83	30.39	3.2	02	3.5	10	06	9	03	03
04	34	20	27	-2	20	25	38	0		0		0.0	0.00	27.91	30.50	2.3	05	3.2	9	01	9	06	04
05	34	25	30	1	27	29	35	0	RA DZ FZRA FZDZ PL	0		T	0.07	27.75	30.32	2.3	08	3.4	9	15	8	15	05
06	39	31	35	6	31	33	30	0	RA FZRA SN PL BCFG BR	0		T	0.03	27.63	30.17	1.1	09	2.3	10	16	8	15	06
07	38	32	35	7	31	34	30	0	RA BR	0		0.0	T	27.43	29.95	4.3	21	5.2	22	20	16	20	07
08	33	28	31	3	30	31	34	0	RA DZ FZDZ FG+ FZFG BR	0		0.0	T	27.62	30.16	1.1	24	2.3	8	19	7	24	08
09	38	30	34	6	31	33	31	0	RA SN	0		T	0.01	27.78	30.34	6.8	17	7.0	20	19	15	18	09
10	44*	27	36	8	30	33	29	0	FG+ FZFG BR	0		0.0	0.00	27.88	30.43	3.8	19	4.4	23	21	20	21	10
11	33	25	29	1	28	29	36	0	FG+ FZFG BR	0		0.0	0.00	27.89	30.46	3.2	04	3.8	12	04	9	04	11
12	36	29	33	6	31	32	32	0	DZ FZDZ SN FG+ FG FZFG BR	3		2.7	0.23	27.12	29.64	8.0	17	9.6	32	22	24	20	12
13	33	10	22	-5	15	20	43	0	RA SN FZFG BR BLSN	2		0.6	0.04	27.06	29.55	13.9	07	19.2	38	05	30	05	13
14	10	3	7	-20	-4	4	58	0	SN	2		T	T	27.45	30.05	15.3	05	15.8	41	05	30	05	14
15	13	0	7	-20	-4	5	58	0		2		0.0	0.00	27.55	30.17	10.8	03	10.9	24	02	20	02	15
16	8	-5	2	-25	-2	1	63	0	BCFG	2		0.0	0.00	27.60	30.25	3.2	16	4.8	14	16	10	15	16
17	17	3	10	-17	7	9	55	0	SN FG+ FZFG BR	2		12.5	0.74	27.31	29.91	6.3	05	6.5	13	05	12	05	17
18	20	14	17	-10	15	17	48	0	SN FG+ FZFG BR	16		11.1	0.61	27.14	29.69	5.1	07	7.2	17	05	15	06	18
19	15	3	9	-17	7	9	56	0	SN BR	18		1.4	0.06	27.52	30.12	2.3	20	2.6	10	20	9	20	19
20	5	-18*	-6*	-32	-5	-2	71	0	SN BCFG BR	17		0.2	T	27.82	30.49	1.3	01	4.1	16	05	13	04	20
21	15	4	10	-16	8	10	55	0	RA DZ SN PL FZFG BR BLSN	16		5.1	0.24	27.39	30.01	10.6	04	10.7	21	04	17	05	21
22	16	-2	7	-19	5	8	58	0	SN FG+ FZFG BR	18		3.8	0.27	27.22	29.79	2.0	18	2.7	16	22	15	22	22
23	12	-4	4	-22	4	7	61	0	SN FG+ FZFG BR	18		1.6	T	27.39	30.00	2.1	14	3.6	12	17	9	16	23
24	29	11	20	-6	18	20	45	0	SN FZFG BR	18		6.1	0.29	27.10	29.66	7.1	13	8.7	23	14	17	15	24
25	29	11	20	-6	17	19	45	0	RA FZRA SN FG+ FZFG BR	20		1.2	0.03	27.02	29.54	6.0	20	6.9	21	20	17	21	25
26	26	9	18	-8	14	15	47	0	SN FG+ FZFG BR	18		1.4	0.09	27.47	30.05	2.6	14	3.9	16	17	12	16	26
27	36	26	31	5			34	0	RA FZRA SN BR	21		3.7	0.22	27.29		13.8	19	15.0	30	20	24	22	27
28	36	28	32	6	31	32	33	0	RA DZ SN BR	17		T	0.13	27.36	29.87	9.3	22	10.2	29	21	23	21	28
29	34	22	28	2	26	28	37	0	SN FG+ FG FZFG BR	21		8.3	0.59	27.37	29.89	8.0	21	12.6	45	22	39	23	29
30	30	19	25	-1	23	24	40	0	SN BCFG BR	21		0.3	0.02	27.71	30.29	3.5	15	6.8	25	21	21	21	30
31	36	23	30	4	25	29	35	0	RA SN BR BLSN	23		1.5	0.08	27.39	29.91	15.6	21	17.4	48*	23	39*	22	31
	27.8	16.0	21.9		18.4	21.2	42.8	0.0	<MONTHLY AVERAGES | TOTALS>			61.5	3.94	27.48	30.06	1.9	14	7.2	<MONTHLY AVERAGES				
	-5.0	-5.6	-5.3		<DEPARTURE FROM NORMAL>								1.69	SUNSHINE, CLOUD, & VISIBILITY TABLES ON PAGE 3									

DEGREE DAYS

	MONTHLY TOTAL	MONTHLY DEPARTURE	SEASON TO DATE TOTAL	SEASON TO DATE DEPARTURE
HEATING :	1328	160	2844	-57
COOLING :	0	0	478	84

GREATEST 24-HR PRECIPITATION :	1.22	DATE :	17-18
GREATEST 24-HR SNOWFALL :	12.5	DATE :	17
GREATEST SNOW DEPTH :	23	DATE :	31

SEA LEVEL PRESSURE		DATE	TIME
MAXIMUM :	30.59	20	1653
MIMIMUM :	29.22	12	2153

NUMBER OF DAYS WITH

MAXIMUM TEMP >= 90 :	0	MINIMUM TEMP <= 32 :	30	PRECIPITATION >= 0.01 INCH :	20
MAXIMUM TEMP <= 32 :	14	MINIMUM TEMP <= 0 :	5	PRECIPITATION >= 0.10 INCH :	10
THUNDERSTORMS :	0	HEAVY FOG :	13	SNOWFALL >= 1.0 INCH :	13

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1-20-2012

(Ord 2008-0005)

RECEIVED 7A-c
DEC 24 2008
CITY CLERK'S OFFICE
SPOKANE, WA

CITY OF SPOKANE
SPOKANE COUNTY, WASHINGTON

EXECUTIVE DECLARATION OF EMERGENCY OR DISASTER IN THE CITY OF SPOKANE, WASHINGTON

WHEREAS, the City of Spokane has been severely affected by extreme winter weather that began on Wednesday, December 17, 2008 has continued to this day, and is forecast to continue for the foreseeable future; and,

WHEREAS, this series of weathers events has involved temperatures sustained in the single digits and remaining well below zero, as well as record snowfall of 19.4 inches in one 24-hour period, and in excess of 39 cumulative inches thus far (to-date the 5th largest snowpack of record); and,

WHEREAS, reliable forecasters predict another 7 to 11 or more inches of snowfall expected within the next 24-72 hours); and,

WHEREAS, the City of Spokane has deployed all available City resources, including manpower and equipment, from the City's Streets, Water, and Sewer Departments, and also has contracted with local private contractors to plow and remove snow throughout the City, and these resources are being utilized 24 hours a day, 7 days a week; and,

WHEREAS, on the 6th day of 24-hour-a-day deployment of all available resources, the City finally almost completed one full plow of the entire City and our approximately 970 miles of streets, as we must continually refocus resources on the snow emergency routes, major arterials and bus routes, and therefore have not been able to circulate citywide to keep all other streets plowed on a regular basis; and,

WHEREAS, with more large amounts of snow on the way, we anticipate we will once again have to focus snow removal efforts on the snow emergency routes, which provide very limited mobility for the community due to the vast majority of streets becoming impassable with accumulated snow; and,

WHEREAS, the City's Police, Fire, and Emergency Medical Services are completely dependent upon motor vehicle access to citizens in need of emergency assistance, which is currently severely restricted due to snow; and,

WHEREAS, the City of Spokane is the regional hub of hospitals, government and academic buildings, transportation and commerce, which all rely upon accessible street systems which currently are clogged with snow; and,

WHEREAS, the City government is spending approximately $220,000 per day ($1.5 million per week) on snow removal, rapidly over-spending the snow removal budget at an alarming rate (total snow removal costs anticipated when the 2008 budget was passed were $2 million, and with these storm events we are on pace to spend $4.5 million); and,

WHEREAS, these unanticipated demands are depleting available resources and we anticipate new storms coming will overwhelm our community and leave us unable to sustain the City's response to these record-setting winter snow events; and,

WHEREAS, these winter snow events have severely disrupted the mobility of emergency responders, public transportation providers, and our citizens, and this, in turn, has caused serious disruptions in health, safety and welfare with the City of Spokane; and

WHEREAS, an emergency or disaster exists that necessitates utilization of the emergency powers granted pursuant to RCW 38.53 and/or 35A.33; and

WHEREAS, significant economic loss has occurred or is occurring as a result of shutdowns necessary to respond to falling and accumulated snow and extreme cold temperatures; and

WHEREAS, the City of Spokane is responsible for maintaining the health, safety, and welfare of its citizens; and

WHEREAS, the City of Spokane has authority, pursuant to RCW 35A.33.080, to make expenditures for emergencies "requiring the immediate preservation of order or public health, or for the restoration to a condition of usefulness of any public property which has been damaged or destroyed by accident, or for public relief from calamity...."; and

WHEREAS, the City of Spokane has authority, pursuant to RCW 38.52.100(1), "to make appropriations for the ordinary expenses of [the City] for the payment of expenses of its local organization for emergency management"; and

WHEREAS, the City of Spokane is a party to the regional Amended Interlocal Agreement for Emergency Management Services. That Interlocal Agreement was established pursuant to RCW 39.34 and RCW 38.52.070 to facilitate cooperation between the City of Spokane and the other local governments that are parties to the Agreement in the event of an emergency; and

WHEREAS, state and federal resources are supplemental to local jurisdiction efforts; and

WHEREAS, a local "Proclamation of Emergency" is a preliminary step to requesting a "Proclamation of Emergency" from the Governor and requesting state and federal assistance,

NOW THEREFORE, AS THE MAYOR OF THE CITY OF SPOKANE WASHINGTON, I DECLARE AS FOLLOWS:

SECTION 1 – Purpose and Intent. As a result of the aforementioned conditions, it is the purpose and intent of this declaration to formally proclaim the existence of a disaster or emergency in the City of Spokane, in order to pre-plan in anticipation of incoming winter storms overwhelming our capacity to respond.

SECTION 2 – Definitions.

A. "Disaster" includes (but is not limited to) destructive natural phenomena, public disorder, energy emergency, riot, or other situation causing destruction and distress that affects life, health, property, or the public peace.

7c

B. "Emergency" includes (but is not limited to) destructive natural phenomena, public disorder, energy emergency, riot, or other grave or serious situation or occurrence that happens unexpectedly and demands immediate action.

SECTION 3 – Emergency Proclamation.

A. It is hereby declared that there is an emergency or disaster as a result of the aforementioned conditions in the City of Spokane, Spokane County, Washington; therefore, designated departments are authorized to enter into contracts and incur obligations necessary to combat such emergency to protect the health, safety and welfare of persons and property, and provide emergency assistance to the victims of such disaster.

B. Each designated department is authorized to exercise the powers enumerated in this Resolution in light of the demands of an extreme emergency situation without regard to time consuming procedures and formalities prescribed by law (except mandatory constitutional requirements).

SECTION FOUR Effective Date. This Declaration shall be in full force and effect upon signature.

DATED this 24th day of December, 2008.

Mary B. Verner, Mayor
Mary B. Verner

ATTEST:

Terri L. Pfister, City Clerk

Approved as to Form:

Howard E. Delaney, City Attorney

Date of Publication:_____
Effective Date:_____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

COUNTY OF SPOKANE

PATRICIA A. COMER
Plaintiff

VS.

SHARON A. COLISTRO
Defendant

No: 09-2-03400-6

DECLARATION OF
JAMES W. HOLCOMB
CONSULTING METEOROLOGIST

I, James W. Holcomb, live in Wenatchee, Washington. I am a Consulting Meteorologist with Clearwest. My mailing address is P.O. Box 485, Wenatchee, Washington 98807-0485. My phone number is 509-662-8560 and email @ ~~clearwest@nwasda.net~~ JHOLCOMB@CLEARWEST.COM

I can verify the weather conditions prior to and on December 24th, 2008 in Spokane, Washington.

Cold air came into the area on December 13th and temperatures remained below freezing until December 27th, often below 20 degrees during this period and as cold as near zero on a few days. Snow was falling in the evening of December 24th with temperatures in the mid twenties. The main Event in Spokane for the month of December was the cold snap from the 13th to the 27th. Reports from Spokane International airport and Felts Field indicated a foot to foot and a half of snow on the groundby the 24th of December, 2008.

Dated: April 13, 2012

James W. Holcomb

MS. COLISTRO: You don't mind if I record it? I'm just writing notes.

MS. COMER: No, that's okay.

MS. COLISTRO: Okay.

MS. COMER: You know, but it'd probably be best, ah –

MS. COLISTRO: And I – I just need to know, did you walk over there or drive?

MS. COMER: No, I walked.

MS. COLISTRO: You walked? Were you – was anyone with you?

MS. COMER: Yeah, my husband.

MS. COLISTRO: Oh, your husband. See I didn't even know you were married or any of this. Okay. And, um, do you know when it happened?

MS. COMER: December twenty-fourth [24th].

MS. COLISTRO: Oh, Christmas Eve.

MS. COMER: Yes.

MS. COLISTRO: Okay. So you're – you're friends with him.

MS. COMER: With Johnny and Chrissy. Yes.

MS. COLISTRO: I didn't know you were friends. And that was Christmas Eve?

MS. COMER: Yes. Um, and so, ah –

MS. COLISTRO: [Inaudible.] Ah, so I guess that takes care of – and then can you tell me how it happened? Were you going in or coming out?

MS. COMER: I was coming out.

MS. COLISTRO: You were coming out of the house?

MS. COMER: Uh-huh [affirmative]. And slipped on the, um – on the, ah, landing mat, went down on the first step. Um –

MS. COLISTRO: There's only two, so –

MS. COMER: Yeah.

MS. COLISTRO: The one on top? You went down onto the second one?

MS. COMER: Yeah. I came down onto the second step. Yeah. Yeah.

MS. COLISTRO: Okay. And so the second step. And your husband, was he helping you?

MS. COMER: Um, he was – he was there when it happened. Yeah. He was just going – yeah, he had just gone down, and I was behind him.

MS. COLISTRO: You – you were behind your husband?

MS. COMER: Yeah.

MS. COLISTRO: [Inaudible] 'cause I just didn't know anything about this. I sure wished I would've. So you had people there to help you?

MS. COMER: Right.

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PATIENT NAME: Comer, Patricia A
TREATMENT DATE: 12/24/2008 AGE/SEX: 54/F
00088609/22237225 DOB: 08/26/1954

CHIEF COMPLAINT: Fall with left leg pain.

The patient is a 54-year-old female presenting by ambulance arriving at 2200 hours stating that she tripped and fell down two stairs, resulting in 9/10 pain in the left lower extremity, about midway between the knee and ankle. The medics put a cardboard splint to the left lower extremity and transported her here. They started an intravenous and administered 20 mg of morphine intravenous, which helped decrease the pain from a 10 to a 9. There was instability in the mid tibia region, according to the paramedics. No other injuries. She had been feeling fine. There was no syncope, no chest pain, no shortness of breath, no fever or chills, no nausea and vomiting, and otherwise all remaining systems were reviewed and found to be negative. She has normal sensation and motor strength to the left foot.

PAST MEDICAL HISTORY: Chronic pain syndrome, requiring her to take 90 mg of Methadone a day. She has a history of hypertension as well. No prior injuries or surgeries to the left lower extremity.

ALLERGIES: SULFA.

MEDICATIONS: Lisinopril 10 mg daily.

I reviewed the past medical history, surgical history, family history, and social history by reviewing the Patient Information Profile (PIP) form filled out by the patient's husband while here in the emergency department. He reports that she has been healthy other than hypertension.

PAST SURGICAL HISTORY: She had low back surgery and she has had an appendectomy.

FAMILY HISTORY: The patient does not know her family history as she is adopted.

SOCIAL HISTORY: Married, unemployed. She does smoke one pack of cigarettes a day. She denies abuse of alcohol or drugs.

PHYSICAL EXAMINATION:

GENERAL:	Reveals a well-developed, well-nourished Caucasian female appearing her stated age, who appears to be in moderate distress with pain. The left lower extremity has been placed in a cardboard splint. Height stated at 5 feet 6. Weight stated at 160 pounds.
VITAL SIGNS:	Temperature is 98.7, pulse 93, respirations 18; blood pressure 139/78, oxygen saturation 97% on room air, which is good oxygenation.
HEENT:	Is normocephalic and atraumatic. Pupils are equal, round and reactive to light at 2 mm. The oropharynx is clear; mucosa is moist. No unusual odor to the breath.

Repairs 2928 E. Grace:

12/01/2007 Renter 2928 E. Grace requested new door knob @ $30.00
12/01/2007 New Black Dishwasher @ E. 2928 Grace
12/04/2007 $70.00 Install dishwasher
12/06/2007 2928 E. Grace new towel bar downstairs. @30.00
01/01/2008 Patton/Birdsell deduct 166.78 from rent for towel bars, light fixtures
2008 New Black Stove E. 2928 Grace @ $550.00
1/05/2009 Service call for dishwasher
8/08/2009 New Black Refrig for 2928 E. Grace (Patton wants to keep old one)$601.99
06/30/2010 Accuflow system @ 355. New hot water tank valve
8/10/2011 New Black Range Hood for 2924 @ Alvair
8/22/2011 Spoke w/Plumber Carrey's wife
Asked Carrey Plumber to call Patton to try and get the appointment Again as this is three weeks not able to get into unit.
8/23/2011 Carey plumber replace shower valve @ 135.00, Valve 75.00
2/2/2012 Note from Patton deducting parts 13.94 from rent. He said he fixed Garage door.
2/06/2012 Specialty door repair 2928 E. Grace-J Patton present. Patton requested second garage door opener @35.00 and had added to bill. @208.66
2/23/2012 Spoke w/ Patton @ residence, said no leak downstairs
3/12/2012 Said he felt toilet downstairs may have seal leak in basement. He said he was busy this month and didn't want to be bothered with Plumber.
4/23/2012 Gave note to Birdsell to schedule plumber for seal and drip downstairs. Patton said he would be gone for a few days.
5/11/2012 J. Patton called for garage spring to be service again at 7 pm.
5/12/2012 Door Specialties notified and repaired @ $157.62

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P-22	Admitted	Paula Dillon Mays Therapy Clinic's Records	ER 904
P-23	Admitted	Accident Related Medical Bills-Various Providers	ER 904
P-24	Admitted	Summary of Medical Bills	ER 904
P-25	Admitted	Assessor's Parcel Summary Re: Owner Information of Subject Property 2928 E. Grace	ER 904
P-26	Admitted	Lease Agreement for 2928 E. Grace between Sharon Colistro and Tenants	ER 904

DEFENDANT'S EXHIBITS

Exhibit No.	Disposition	Description	Witness
D-101	Partially Admitted	Photographs of 2928 E. Grace **(Note: Partially admitted as to the exterior-four interior photos returned to counsel)**	Stipulated
D-102	Not Offered	Winter Photograph of Entryway	
D-103	Not Offered	Photo of Plowed Driveway	
D-104	Admitted	Property Condition Check List	Stipulated
D-105	Not Offered	Letter from J. Patton dated 2/1/12	
D-106	Not Offered	Receipt from Door Repair dated 2/12	
D-107	Not Offered	Cancelled Rent Checks	
D-108	Not Offered	Photos by T. Munson (2)	
D-109	Not Offered	Affidavit of J. Patton dated 4/12	
D-110	Not Offered	Affidavit of K. Birdsell dated 4/12	
D-111	ID Only	Report of NOAA	Dr. Corp
D-112	Not Offered	National Date Center Report	
D-113	Not Offered	Media Release--Mayer	
D-114	Not Offered	Floor Mat	
D-115	ID Only	Enlargement-Two Photographs of 2928 E. Grace and Two Weather Reports	Mr. Patton
D-116	Not Offered	Replica of Stairs/Entryway	
D-117	Admitted	Group of Photographs (4 views) taken by Mr. Maloney of 2928 E. Grace	Stipulated
D-118	Admitted	Group of Photographs (4 views) taken by Mr. Maloney of 2928 E. Grace	Stipulated
D-119	Not Offered	Group of Photographs (4 views) taken by Mr. Maloney of 2928 E. Grace	Counsel

Note: The exhibits that were not admitted during trial were returned to the party offering them.

Date trial began: June 25, 2012
Kristy Harmon, Court Clerk

(Copy Receipt) Clerk's Date Stamp

SUPERIOR COURT OF WASHINGTON Spokane County	CASE NO. 2009-02-03400-6
COMER, PATRICIA vs. Plaintiff(s) COLISTRO, WAYNE ETUX ETAL Defendant(s)	Amended Civil Case Schedule Order (ORACS)

I. BASIS

Pursuant to LAR 0.4.1 IT IS ORDERED that all parties shall comply with the following schedule:

II. SCHEDULE		DUE DATE
1. Last Date for Joinder of Additional Parties, Amendment of Claims or Defenses		03/05/2012
2. Plaintiff's Disclosure of Lay and Expert Witnesses		03/05/2012
3. Defendant's Disclosure of Lay and Expert Witnesses		03/05/2012
4. Disclosure of Plaintiff Rebuttal Witnesses		03/05/2012
5. Disclosure of Defendant Rebuttal Witnesses		04/02/2012
6. Last Date for Filing: Motions to Chng Trial Date, Note for Arbitration, Jury Demand		04/02/2012
7. Discovery Cutoff		04/23/2012
8. Last Date for Hearing Dispositive Pretrial Motions		05/25/2012
9. Exchange of Witness List, Exhibit List and Documentary Exhibits		05/25/2012
10. Last Date for Filing and Serving Trial Mgmt Joint Rpt, including Jury Instructions		05/25/2012
11. Trial Memoranda, Motions in Limine = evidentiary matters		06/11/2012
12. Pretrial Conference	9:30 AM	06/15/2012
13. Trial Date	9:00 AM	06/25/2012

III. ORDER

IT IS ORDERED that all parties comply with the foregoing schedule pursuant to Local Rules 0.4.1 and 16.

DATED: 02/10/2012

Linda G. Tompkins

LINDA G. TOMPKINS
JUDGE

The Plaintiff's submittals after the disclosure of la
and experts appear to be very clearly responsive to new
material being provided by Defense, and the fact that that
comes off the scheduling order cutoff is mitigated by the fa
that all parties have the obligation to supplement their
discovery responses.

As Counsel Ms. Murphy has indicated today in her
statements to the Court she has expanded the scope of her
representation to include the trial. The matters that have
taken place up to today's date fall within a pattern on beha
of Ms. Colistro to provide impact, affect the testimony and
additional information outside of the channels of Counsel.

I will trust that Ms. Murphy has admonished her client
that all parties are to subject to the rules, and that ex
parte communication cannot be accomplished through the effort
of a party rather than counsel to that party.

These are extreme circumstances that have significantl
impacted the testimony of at least one of the fact witnesses.
and sanctions as it relates to CR 37 discovery sanctions are
clearly a very defined, identifiable disregard for the rules.

Because it is of such a comprehensive nature, the Cour
is satisfied that, although the answer won't be disregarded o
vacated, that significant expert testimony and factual
testimony witnesses will be stricken.

None of the, quote, interrogatories to witnesses will

be admissible. None of the material that was delivered to the Court or to Mr. King within the last week will be utilized, and the irregularity in the dates between the Maloney, Gill and I believe Fassett reports, date of reports versus service of reports creates a significant doubt as to the validity, reliability and even admissibility of some of the proffered testimony.

The Fassett affidavit is by no means an acceptable response to interrogatories, requests for production, requests for admissions, and the effort to contact Mr. Patton and somehow now shift responsibility is not going to be recognized or available, again based on the improper communication.

No information received from any of the recordings, the unauthorized recordings may be part of the testimony.

The Court then will be recognizing Defense witnesses to include only Ms. Colistro, Ms. Birdsell and one of the three experts that are listed, Fassett, Gill or Maloney. And again, because the Court is not presented with substance as to what those experts are intended to testify to or anticipated to testify to, Ms. Murphy, I am going to allow you to select one of those, but Mr. King will have an opportunity to interview that witness before the witness's testimony.

So as to Fassett, Gill and Maloney you may choose and that person may testify, but only after Mr. King has had an opportunity for a personal interview before with you present.

THE COURT: I will strike that reference to criminal and RCW 9.

MS. MURPHY: Thank you, Your Honor.

THE COURT: I am reserving on terms. I have in mind the numerous hearings that took place on starts and stops and the numerous continuances based on Ms. Colistro's errors and her admonition to obtain timely counsel, to follow the rules and to recognize that the Court is not a forum for doing the best you can, that it is a legal forum, absent lack of financial resources that parties must conform their conduct to and that has not been the case.

I will recognize that Mr. King has been restrained in his request for sanctions in several, several hearings that were unnecessary, and likely resulted in excess attorney fees being incurred on the part of his client so I am reserving on financial terms, but I am likely to be ordering some financial terms upon proper documentation. Reserving at this time.

Give me a moment if you will to make a note of Court's rulings.

Not only was CR 37 violated in significant fashion, but the scheduling order was also disregarded. Again, I am not basing my ruling entirely on that, based on some missed dates on both sides.

All right. Any other Plaintiff's motions? Mr. King?

MR. KING: I don't believe I have any other motions,

Your Honor.

THE COURT: All right.

MR. KING: I don't know if this will this change the Court's opinions, though, on the previous ruling. I know the Court mentioned that in my lay and expert witness that we had included summaries. I think you said that because I didn't that you weren't going to punish them as severely. I actually provided an expert report to them along with CV well before the discovery cutoff. I don't know if that makes a difference, but I just thought just make that clarification.

THE COURT: I was giving a review of the file certainly. I wasn't able to ascertain that. Certainly I am trying to balance this realizing the role that Ms. Colistro has played, but by the same token Counsel is vested with the authority to make sure any activity of the client is appropriate and follows the rules.

MR. KING: Thank you, Your Honor.

THE COURT: All experts will be excluded prior to their testimony unless there is a special circumstances set forth. That is the Court's general pretrial order.

And Ms. Murphy, Defense motions?

MS. MURPHY: Yes, Your Honor. Just to clarify, Your Honor. That was Ms. Colistro herself testifying, Ms. Birdsell. Is Jeffery Colistro also on that, her son, also are you including?

THE COURT: Yes.

MS. MURPHY: Make sure I had this right.

Your Honor, we had moved in defense of Mr. King's effort to exclude some of our exhibits, I think that was the, am I correct in thinking that is where we left off, Your Honor?

THE COURT: We have completed Mr. King's motions in limine.

MS. MURPHY: Okay. My understanding -- do you want to start now. I have no other motion other than the motions on admission of our exhibits and so forth.

THE COURT: Are you requesting to strike some of the Defense exhibits in your motion in limine?

MS. MURPHY: No, Your Honor. I wasn't sure if he gets to argue against them not or do you want to make those arguments at the time?

THE COURT: Argue against?

MS. MURPHY: Well, Mr. King has indicated there were some exhibits he wanted to -- we had some of Mr. King's exhibits, our exhibits that Mr. King wanted to exclude and we haven't had a chance to discuss that.

THE COURT: The inquiry that the Court made at the very beginning was just to see if we could gather up all the stipulations and sort of get them off the table.

MS. MURPHY: I am sorry. When you said did I have

15 A-7

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

PATRICIA A. COMER Plaintiff Vs. SHARON A. COLISTRO Defendant	No: 09-2-03400-6 MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This is personal injury case. Plaintiff, PATRICIA COMER, alleges that she was injured in a fall suffered while a visitor at a duplex home owned by Defendant that was at that time, and continues to be, rented by JOHNNY D. PATTON and KRISTINA M. BIRDSELL.

For the reasons given herein, Defendant hereby moves the court to grant summary judgment for Defendant. Based on the undisputed material facts, Plaintiff is unable as a matter of law to establish Defendant's liability, because Plaintiff cannot show that Defendant had an opportunity to correct the alleged defect. The tenant living in the duplex, Plaintiff's own witness, has testified under oath that Defendant could not have fixed the alleged defect prior to Plaintiff's injury due to extreme weather conditions. Given this undisputed fact, there

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Spokane Valley, WA 99206
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exists no possibility of Plaintiff prevailing on her claim. As such, the Court should dismiss this action.

II. STATEMENT OF UNDISPUTED FACTS

During December of 2008, the city of Spokane was subject to a record-breaking show storm that lingered over the area for many days. On December 24, 2008 Plaintiff and her husband walked across the street from their house on East Grace to the home of Mr. Johnney Patton and his partner, Kristina Birdsell, who were leasing the duplex from the Defendant.

Mr. Patton has testified through a sworn affidavit that he knew there was ice on his roof as a result of the snowstorm, but that he did not expect Defendant to be able to fix it due to the extreme weather. It is also undisputed that Mr. Patton and Defendant had agreed that Mr. Patton would make any necessary repairs or maintenance to the property and deduct the costs of doing so from his rent. (See attached "Affidavit of Johnney Patton, Exhibit # 1)

III STANDARD OF REVIEW

In reviewing an Order of summary judgment the appellate court has found that "Summary judgment is proper... when the pleadings, depositions, and admissions in the record, together with any affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law" *McMann v. Benton County,* 88Wn. App737, 740, 946 P 2d 1183, 1185 (1997) All facts and reasonable inferences are considered most favorable to the nonmoving party." *Id.*

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IV ARGUMENT

A. **The Plaintiff cannot meet the required elements under common law or the Landlord Tenant Act:**

In *Musci v. Graoch Assocs., LTD. P'SHIP*, 144 Wn. 2d 847 (2001), 31 P.3d 684 (2001) the court quoted with approval the decision in *Geise v. Lee* 84 Wn.2d at 871, 529 P.2d 1054 (1975), in which the Court emphasized that the "Landowner is not a guarantor of safety. To prevail against a landowner, a Plaintiff must prove (1) the landowner had actual or constructive notice of the danger, and (2) the landowner failed within a reasonable time to exercise sensible care in alleviating the situation. Here, the testimony of Plaintiff's own witness conclusively proves that Plaintiff cannot meet the second required element.

Mr. Patton, in the attached Affidavit, states that he telephoned Mrs. Colistro "3-4 weeks" before the incident on a matter regarding the plumbing in his home. He attests that then, as an aside, he told her of a problem with ice on the roof. He adds that he "did not expect" her to repair the roof problem until after the weather improved.

While Defendant denies any record of such a call, taking the testimony in the light most favorable to the Plaintiff, it is obvious that the tenant did not regard the alleged defect to be urgent, as he called only secondarily to another issue. He also regarded the repair as one which would necessarily need to wait until after the record- breaking foul weather had passed, presumably because climbing on the roof to remove ice during such weather would be an

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exceptionally dangerous task. (see attached exhibit # 2 Emergency Declaration of Mayor Verner).

Moreover, the Defendant had reason to rely on Mr. Patton's assessment of the situation. She and the tenants had developed a course of dealing that would lead her to expect him to tell her if he thought a problem could not wait for remediation. The tenants completed a thorough inspection at the inception of their lease and made no note of a gutter issue. (Exhibit # 3). They then had an ongoing arrangement with the landlord that, in addition to performing ordinary maintenance on the home, they would, and did, repair and/ or replace defects in the home and deduct their costs from the rent. The arrangement was so mutually trusting that Mrs. Colistro did not require prior notice nor did she ever question the deductions. (see attached Exhibit# 4 a & b and # 5 Declaration of Gary McDonald)

Thus, there is no genuine dispute of fact as to the issue of whether Defendant failed within a reasonable time to exercise sensible care in alleviating the situation. It is beyond dispute, given the testimony of Mr. Patton, Plaintiff's own witness, who is also the only person able to competently testify to this fact, that it was not reasonable to expect anyone to remove all of the ice from the roof of a house during extreme weather. Moreover, Mr. Patton's letter shows that *he* was usually the person responsible for making such repairs, and that Defendant's only duty was to compensate him for doing so, unless otherwise notified in writing. (also see receipts for repairs and purchase Exhibit # 6)

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Given these facts, Plaintiff cannot meet her burden under *Geise* to prove that Defendant failed within a reasonable time to correct the allegedly dangerous condition. Thus, the Court should grant summary judgment in favor of Defendant.

Dated June 3, 2012

Mary S. Murphy, WSBA 19235

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

PATRICIA A. COMER Plaintiff Vs. SHARON COLISTRO Defendant	No: 09- 2- 03400-6 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant, through Counsel, hereby moves the Court for Summary Judgment. Defendant is entitled to judgment as a matter of law because the evidence is insufficient to support a finding of all elements necessary to establish liability. To wit, sworn and indisputable testimony from Plaintiff's witness establishes that Defendant never had a reasonable opportunity to fix the alleged defect that is the basis for this action. As such, Plaintiff cannot meet her burden of proof and judgment should be entered for the Defendant.

This Motion is based upon the attached Memorandum of Authority and the Record and files before the Court.

Dated 6/03 2012

Mary S. Murphy WSBA # 19225

Mary S. Murphy, *Attorney at Law*
606 North Pines, suite 200
Spokane Valley, WA 99206
509-893-4457, FAX 838-2117

FAX coversheet
May 29, 2012

To: Mark King, Atty at Law FROM Mary Murphy

FAX # 509-252-0011 FAX # 509-838-2117
# of pages 7 Tel. 535 –7220/ 879 3995 (c)

Mark, haven't been able to reach you since sending our suggested additions and exhibit list on Friday last. I hope that means you had a good holiday- I am sending a corrected list of exhibits, (numbering wrong) . I did add one, but I think you will not mind in that it is an official government document.. Also sending a summary report from one of our experts, Joellen Gill. Sorry it is late, our communications were a bit confused.

Please let me know when you would be at your office so that I can come down and sign Joint Management Report and drop off our exhibits.

Thank you,

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SPOKANE COUNTY

PATRICIA COMER

Plaintiff

vs.

SHARON CALISTRO

Defendant.

No. 09-2-03400-6

EXPERT REPORT OF WILLIAM E. FASSETT, PH.D., R.PH.

COMES NOW William E. Fassett, Ph.D., R.Ph. and attests as follows:

1. I am over the age of eighteen and am competent to testify at deposition or at trial concerning the matters in this report, should that become necessary.

2. I have received information from Defendant indicating that at the time relevant to Plaintiff's slip and fall, plaintiff was consuming a variety of prescribed medications including lisinopril, cyclobenzaprine, estradiol, medroxyprogesterone, trazodone, methadone, hydrochlorothiazide, and acetaminophen with codeine 60 mg. The Defendant also provided me with copies of correspondence between the Defendant and the Drug Information Center at Washington State University in Spokane, describing the Plaintiff's daily regimen and her

consumption of a pack of cigarettes daily. Defendant has also averred to me that between 6 pm and 9 pm – and throughout the day – on the date of the injury the Plaintiffs and Host consumed alcohol. My conclusions herein are based on the assumption of the accuracy of the Defendant's information; I am prepared to reevaluate my conclusions in light of different evidence.

4. The Plaintiff's consumption of methadone was reported to be 90 to 100 mg per day. This is an extremely and unusually high dose of methadone, equivalent to consuming between 1,080 and 1,200 mg of morphine daily. According to information from the Washington State Department of Health, Washington Medicaid in 2008 served 11,432 clients who were consuming prescribed opiates. Only 792 of those clients, or less than 7%, were consuming more than 1,000 mg per day of morphine equivalent doses. The National Highway Traffic Safety Administration's Drugs and Human Performance Fact Sheet on methadone summaries consistent research in the pharmaceutical literature which demonstrated that patients on methadone maintenance programs suffer significant impairment in attention, perception, learning tasks, distance perception, time perception, and attention span.[1] Interactions with other drugs are predictably associated with further impairment of cognitive and psychomotor functions.

5. Based on my training and experience, I also identified 4 of the Plaintiff's medications that are likely to interact with each other and with ethanol: methadone, codeine, cyclobenzaprine, and lisinopril. The Plaintiff was stated to have taken cyclobenzaprine at a dose of 10 mg every 8 hours, lisinopril at a dose of 10 mg daily, and acetaminophen with codeine at a dose of 60 mg codeine, but no information was provided on the frequency of dosing. I did not include trazodone, because the information indicated that the Plaintiff was taking that drug at bedtime

[1] USDOT, NHTSA, Drugs and Human Performance Fact Sheet: Methadone; www.nhtsa.gov/people/injury/job185drugs/methadone.htm, accessed 20 Apr 2012.

and would not have consumed it in the relevant pre-fall timeframe. I utilized the report functions of Clinical Pharmacology On-line™ to generate a drug interactions report. Clinical Pharmacology On-line is widely accepted among pharmacists and other prescribers as a reliable source of drug and drug interaction information.

Cyclobenzaprine and methadone taken concomitantly constitute a severe (Level 1) drug interaction, which can "cause additive effects of sedation and dizziness, which can impair the patient's ability to undertake tasks requiring mental alertness."[2] The combinations of codeine and ethanol, codeine and methadone, cyclobenzaprine and ethanol, and ethanol and methadone all constitute major (Level 2) drug interactions. Each interaction increases CNS depression and impairs the patient's ability to perform tasks requiring mental alertness.[3] Codeine and cyclobenzaprine exhibit an interaction of moderate seriousness (Level 3), consisting of, *inter alia,* CNS depression. Ethanol may interact with lisinopril (a Level 3 interaction) to increase the hypotensive effect of lisinopril, which could lead to a reduced blood pressure and dizziness or fainting.[4]

6. Based on the information provided, interpreted according to my education, training and experience, it is more likely than not that certain of the Plaintiff's medications when consumed in combination with or without alcohol would have rendered the Plaintiff unsteady, with impaired sensory responses, and impaired judgment that would more likely than not have contributed to the slip, fall, and initial injury to her leg.

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[2] Clinical Pharmacology Online Drug Interaction Report, 23 Apr 2012, p. 1.

[3] *Ibid.*, pp. 2-6.

[4] *Ibid.*, p. 6.

7. I am a pharmacist licensed in the State of Washington (Lic. No. PH00008093, exp. 11/8/2012) and have been continuously so since 1969. I am currently Professor in the Department of Pharmacotherapy at Washington State University in Spokane, and have been so employed since 1999. I teach or have taught courses related to the practice of pharmacy, and the pharmacotherapeutic uses of drugs used to treat pain, including opiates, at the University of Washington, Drake University (Iowa), and Washington State University. A copy of my curriculum vitae has been provided to the Defendant. I am familiar by education, training, and experience with the properties, uses, effects, adverse effects, and interactions of drugs commonly prescribed for ambulatory care patients, including the agents said to have been prescribed to the Plaintiff, Patricia Comer.

My opinions expressed herein are formed with reasonable pharmaceutical certainty on a more likely than not basis.

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

DATED at Spokane, Washington this 23rd day of April, 2012.

By: _____ Digitally signed by William E. Fassett Date: 2012.04.23 11:03:24 -07'00'

William E. Fassett

18-A

Applied Cognitive Sciences
Human Factors Engineering
A CONSULTING GROUP

May 27, 2012

Mary Murphy Law
606 North Pines Road
Suite 200
Spokane Valley, Washington 99206

Re: Ms. Comer vs. Ms. Colistro

Dear Ms. Murphy:

As you requested I have reviewed the initial file material which your office provided concerning Ms. Comer's slip and fall accident on the exterior steps at Ms. Colistro's rental duplex located at 2928 East Grace Avenue in Spokane, Washington. Based on my training and extensive experience over the past 15 years in fall at elevation accidents (i.e. slip and fall, trip and fall, misstep and fall, etc.) and facility design personal injury accidents, the following letter summarizes my preliminary findings concerning Ms. Comer's slip and fall accident.

Background
It is my understanding that on the day of Ms. Comer's slip and fall accident, December 24, 2008, she and her husband had been invited across the street to 2928 East Grace Avenue to visit their neighbors, Mr. Patton and Ms. Birdsell, who were renting the east side of the subject duplex from the owner, Ms. Colistro. The Comers arrived at the subject property approximately 7:00 PM and departed approximately 9:00 PM. As the Comers were departing the property, Mr. Comer exited the home first and held the exterior door open for his wife to follow. As Ms. Comer stepped out onto the concrete landing she slipped and fell in an accumulation of ice on the landing.

Site Specific Conditions
While I have not been afforded the opportunity to inspect the subject property, I have read the reports prepared by Mr. Corp and Mr. Maloney concerning the subject accident. Neither report noted any hazardous conditions relative to the design of the concrete landing or the two steps descending from the landing to the sidewalk. In fact, Mr. Corp noted that there were no building code violations identified. Based on the photographs I have reviewed as well as Mr. Corp's measurements, I agree there do not appear to be any building code violations. For example, the step riser heights and tread depth are likely in compliance with applicable building codes at the time of construction. That is, the minimum riser height requirement in the Uniform Building Code in 1985 was revised from 7½ inches to 7 inches; while I do not know the date of permitting of the subject property, based on the photographs I have reviewed it is likely the home was built prior to 1985 while the building code still allowed a 7½ inch riser height. Notwithstanding, even if the more stringent requirement (i.e. 7 inches) applied

18-B

and a violation did exist, this is not proximate to the accident as Ms. Comer slipped on the landing prior to descending the steps.

Mr. Maloney was in agreement with Mr. Corp's conclusions as stated above; in his report he stated: "....the walkway, steps and landing meet the requirements of current and past building codes" and "The landing, steps and walkway are maintained in good and serviceable condition, and are not in need of repair".

There is a factual dispute, however, with respect to the condition of the gutter on the roof overhang over the landing which I cannot resolve. Notwithstanding, following is a summary of the opinions offered by Mr. Corp and Mr. Maloney.

Mr. Corp maintains:

1. The gutters had leaks from their 90 degree bends.
2. The gutters had moss growing inside in several areas.
3. The gutters were pulled out from the roof far enough that water dripped between the soffit and gutter.
4. Freezing conditions in the winter would cause gutter leaks and water overflow to freeze on the walkways and steps.

Conversely, Mr. Maloney offered the following opinions:

1. The gutter appears in good repair as of the date of his inspection: February 10, 2012.
2. Caulk was observed at minor seam locations.
3. No meaningful concrete walkway erosion was observed beneath the gutter.
4. No active dripping was observed.
5. No meaningful spall was observed.
6. No meaningful wear or abrasion was observed.
7. No focused or concentrated surface erosion (from chronic gutter dripping) was observed beneath the roof gutter.
8. The gutters are an enhancement to roof drainage control, and are not dangerous or unsafe.

While I cannot support or refute the opinions as stated above without a site inspection, I do offer the following observations:

1. While Mr. Corp does not state in his report when he inspected the subject property, his report is dated March 19, 2012, or over 3 years after the date of Ms. Comer's accident. Any observations relative to leaks, moss growth in the gutters and the positioning of the gutters relative to the soffits 3 years and 3 months after the subject accident would be inconclusive with respect to conditions that existed on December 24, 2008.
2. With respect to Mr. Corp's opinion 4 above, I agree that freezing temperatures would cause water to freeze on the walkways; however I disagree that freezing temperatures would cause gutter leaks. Certainly there are many gutter systems around Spokane that do not leak with sub-freezing temperatures.
3. Mr. Maloney does state in his report that he inspected the subject property on February 12, 2012, once again over 3 years after the subject accident. Unlike Mr. Corp's opinions relative to the gutters however, Mr. Maloney bases his

18-C

opinions on the condition of the concrete below the gutters. Without question, gutters that routinely leak over long periods of time will cause significant staining/spalling in concrete surfaces below, as well as on soffits and fascia. If no such staining/spalling was observed at the time of Mr. Maloney's inspection, it is unlikely any such staining/spalling was present at the time of the accident and furthermore unlikely that gutters on the subject property had been leaking extensively at the time of the subject accident. The point to be made is that if there was indeed leaking from the gutters at the time of the accident it is unlikely that it had been an ongoing chronic problem.

Weather Conditions

At the time of this accident in December 2008, Spokane, Washington was in the midst of a severe weather pattern. In fact, Spokane Mayor Mary Verner declared an emergency within the City of Spokane on December 24, 2008, the day of this accident, as a result of "record snowfall in the past week and forecasts for continuing snow today and throughout the week".

I have been afforded the opportunity to review historical weather records for December 24, 2008; these records support the conclusion that temperatures never rose above freezing on December 24, 2008. Specifically, the National Oceanic and Atmospheric Administration historical records for December 24, 2008 indicate a maximum temperature of 29 degrees and a minimum temperature of 11 degrees at Spokane International Airport. Similarly, the Weather Underground historical weather website indicates a maximum temperature of 28 degrees and a minimum temperature of 10 degrees. It is important to note that these two historical databases are in agreement with each other, as well as support the declaration of Mayor Verner concerning the weather conditions.

Mr. Corp, however reports a different weather pattern for December 24, 2008. In his report he states that above freezing temperatures, including the maximum temperature of 43 degrees, was observed between the hours of 6:00 PM and midnight.

Once again the factual dispute as to the exact conditions that existed at this particular location, several miles from recording weather stations, must be resolved by the trier of fact. Notwithstanding, the relevant question with respect to temperatures that existed at the subject property in the hours preceding and during Ms. Comer's fall is whether or not above freezing temperatures, if they indeed existed, were present long enough to result in melting and dripping off the gutters, and, if so, were the temperatures still low enough on the concrete landing to immediately refreeze any dripping water. Given the north facing orientation of the duplex, as well as the fact that on the day of Ms. Comer's accident the sun had set at 4:02 PM (i.e. almost 2 hours before the temperature rose to the above freezing mark, assuming it got above freezing) and almost 5 hours prior to Ms. Comer's accident), it is unlikely in my opinion that it would have been warm enough to initiate melting from the gutters.

Finally, it is important to point out that irrespective of the condition of the subject gutters at the time of Ms. Comer's accident, it is highly likely that ice would accumulate on the subject walkway given the north facing orientation of the duplex and

the prevailing weather conditions (i.e. light snow and wind all day) on December 24, 2008.

Responsibility of Ms. Colistro

As discussed above, there are a number of factual disputes in this matter. Notwithstanding, it is my opinion that a property owner does have the responsibility to maintain the property free from hazardous conditions. However, this responsibility does not extend to the day to day maintenance of the property. It is my understanding that Ms. Colistro did not engage in the practice of shoveling snow and applying ice melt to walkway surfaces when weather conditions necessitated such actions, nor did Ms. Colistro engage the services of a third party to perform such actions. Rather, as is commonplace in home rentals, such activities were the responsibility of the tenant, Mr. Patton. For example, had Mr. Patton left a garden hose over the walkway which resulted in a trip and fall by the mail carrier, this would certainly not be the responsibility of Ms. Colistro. If, on the other hand, a sprinkler head had become dislodged and became positioned over the edge of the sidewalk causing a trip hazard, the repair of this condition would be the responsibility of Ms. Colistro. It is important to point out, however, that Ms. Colistro must be informed of such hazardous conditions in order that she can take appropriate action. It is unreasonable to expect that Ms. Colistro, or her agent, would inspect the property on a daily basis for hazardous conditions.

With the respect to the subject accident and notice to Ms. Colistro about a problem with the gutters, there is yet another factual dispute. Mr. Patton affirmed in a signed affidavit that he had called Ms. Colistro approximately 3-4 weeks prior to the subject accident to inform her of a bathroom plumbing problem; during that conversation he mentioned to her ice from the roof was pulling the gutters down. He went on to affirm that he did not expect an immediate fix of the roof until weather conditions improved (i.e. they did not improve before the subject accident). Ms. Colistro denies receiving any such phone call. Notwithstanding, assuming that Mr. Patton's account of this "notice" is accurate, he clearly acknowledged that he did not expect any action on the part of Ms. Colistro, nor would any such action have been practical given the weather conditions. With this acknowledgement, Mr. Patton effectively admits he is aware of the problem and that it then was his responsibility to keep the subject walkways free of snow and ice until such time as any required maintenance work could be safely performed.

Conclusions

Regardless of the many factual disputes addressed above, it is my opinion that on the night of Ms. Comer's slip and fall accident, it was Mr. Patton's responsibility, and not Ms. Colistro's responsibility, to maintain the walkways free from snow and ice, particularly as this was not a sudden unexpected change in weather conditions, but rather a predicted and ongoing weather pattern. In addition, Ms. Comer was present at the subject property in response to an invitation by Mr. Patton. That is Mr. Patton knew that his guests would be using the subject walkway to enter and exit the home and knew of the propensity for ice to form on the subject walkway; it was his responsibility to ensure the walkway was in a safe condition or at the very least to have provided an

the prevailing weather conditions (i.e. light snow and wind all day) on December 24, 2008.

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PSNW PROPERTY SOLUTIONS NORTHWEST

"YOUR PROFESSIONAL RESOURCE" INSPECTION ♦ ASSESSMENT ♦ ANALYSIS ♦ EVALUATION

February 11, 2012

Ms. Sharon Colistro
E. 8319 S. Riverway
Millwood, WA 99212

Reference: 2928 E. Grace
Spokane, WA

Dear Ms. Colistro:

On February 10, 2012, I examined the property at 2928 E. Grace, Spokane, WA.

PURPOSE

The purpose of the investigation was to examine reported roof gutter concerns at the property. Of particular interest was the nature and scope of the reported roof gutter concerns, and determination of the cause. Investigation of other aspects of the property was not conducted, unless specifically noted below.

PREMISES

The subject structure is a single story frame building, constructed over a basement, extending approximately five to seven feet below grade. The structure is occupied as a two family residential structure. Two single car garages, built over a concrete slab on grade, are attached to the structure. The building is of unknown age, and is maintained in average condition.

INVESTIGATION OBSERVATIONS

For the purposes of this report, the front of the house (street side) is presumed to face xxnorth. All references to direction or orientation are made relative to this presumed structure orientation, and are not intended to establish true compass direction.

The structure is constructed with a hip roof with a slope of approximately 4:12. The roof is covered with composition shingles.

The front entry to the subject structure is a poured concrete landing, served by integral concrete steps with two risers. A concrete walkway joins the steps to concrete driveway. The structure roof overhangs the entry landing and steps, and a portion of the connecting walkway. Of note is the lawn surface, along the east and north edges of the connecting walkway, where the grass elevation was moderately above the walkway surface.

The roof gutter is served by a single down drain at the northeast corner of the unit. The gutter appears in good repair. Caulk was observed at minor seam locations. No meaningful concrete walkway erosion was observed beneath the gutter. No meaningful fascia or soffit staining was observed beneath the gutter. No active dripping was observed.

19-B

The concrete landing, step, walkway and driveway surface is finished with a coarse broom finish. No meaningful spall was observed. Light surface wear, limited to cement exposure of surface aggregates, was noted on the step edges. No meaningful wear or abrasion was observed. No focused or concentrated surface erosion (from chronic gutter dripping) was observed beneath the roof gutter.

CONCLUSION

With a reasonable degree of certainty, based upon the above stated observations; it is my opinion that the walkway, steps and landing meet the requirements of current and past building codes. Marks and discoloration areas result from minor surface wear, and are not the result of roof discharge erosion. The landing, steps and walkway are maintained in good and serviceable condition, and are not in need of repair. The landing, steps and walkway is not dangerous or unsafe.

The roof gutters catch roof runoff, and minimize moisture below. Roof gutters are not required, nor governed by, current or past building codes. The caulk on the roof gutter seams, suggests earlier repairs, likely in response to leak activity. The gutters are maintained in good and serviceable condition, and are not in need of repair. The lack of walkway drip erosion indicates the gutters are functioning properly. The gutters are and enhancement to roof drainage control, and are not dangerous or unsafe.

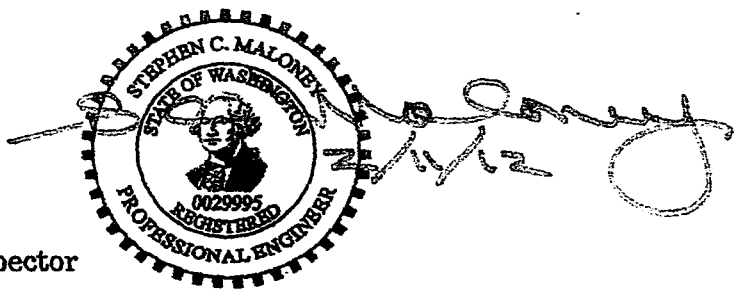
The lawn abutting the walkway is above the walkway surface elevation, which is common with exterior flatwork. Drainage at the northeast corner of the walkway may become a nuisance during periods of heavy precipitation or snow activity. The condition is very common; is not dangerous, but does require occasional care when trapped water, snow or ice is present. As the area is not covered by the roof overhang, the area is always subject to rainfall or snow activity.

LIMITATIONS

The information contained in this report is for the exclusive use of; and Property Solutions NW assumes no responsibility or liability for any use of this report by other parties. This report relates solely to the stated purpose of this investigation; and no representations concerning other aspects (if any) of the circumstance, structure or site are included. The conclusions are based on the above stated visual observations, and no destructive testing or monitoring was performed. No guarantee or warranty, expressed or implied, is provided.

If you have questions, please contact me.

Respectfully,



S. C. Maloney, P.E.
ICBO/ICC Certified Building Inspector

20A

Analysis of Weather
24 April 2008
for
2928 E. Grace,
Spokane, WA

I have reviewed data for the subject location and date. The review indicates that the temperatures for that date at the Spokane Weather Office (KOTX) were below freezing all day. The daily temperatures at KOTX had been below freezing since14 December and remained below freezing until 27 December.

Since the house is located only about two miles from Felts Field (KSFF) in the Spokane valley, data from the KSFF would be more representative than the data from KOTX, which is approximately 400 feet higher and a significant distance away from the property of interest. The temperatures at KSFF in the hourly data downloaded on the internet from Weather Source for 20 Dec 2008 through 25 Dec 2008 showed temperatures below freezing from the start, 20 Dec 2008, to 6:00 PM on 24 Dec 2008, rising to 43 Deg F at 8:00 pm and then falling back to 32 Deg F by 3:00 AM. Snow and light snow were falling most of the day and evening. The wind at KSFF in the evening of 24 Dec 2008 was ENE to ESE. Based on the property analysis by Property Solutions Northwest, the house faces north.

In my opinion, any snow on the roof would probably not have melted sufficiently, if at all, to cause any significant influx of water into the gutter system on the evening of 24 Dec 2008. In addition, with the winds from mostly easterly directions, there should have been little effect of wind on the snow on the roof and hence the gutter. Both the gutter and the roof in the area of the porch would have been mostly shielded from any wind.

S. Edward Boselly III, President
Weather Solutions Group
3802 Kinsale Lane SE
Olympia, WA 98501

20 April 2012

Memo June 25, 2012

Additional Information for Sharon Colistro Legal Case

As a result of a June 22, 2012 telephone conversation with attorney Mary Murphy. I had two tasks to follow up on: a) Obtain any road weather data that might be available along I-90 in roadway the Felts Field area; and b) Determine the status of the Automated Surface Observing System (ASOS) at Felts Field on December 24, 2008.

Regarding a), I contacted the Easter Region of the Washington State Department of Transportation in Spokane and spoke with a highway maintenance person and the Transportation Management Center in Spokane. Unfortunately there is no road weather system installation on I-90 in that area. The installations are at Garden Springs and 277 to the west, 18th and Ray on the hill to the south, Liberty Lake to the east, and at the T.J. Meenach Bridge (SR 902 Interchange) to the north.

Regarding the weather instrumentation at Felts Field, it turns out the weather station at the field is an Automated Surface Observing System (ASOS) and not an Automated Weather Observing System (AWOS). The AWOS systems are maintained by the FAA, while the ASOS systems are maintained by the National Weather Service (NWS). I contacted the Spokane National Weather Service office and learned that on Dec 24, 2008, the temperature readings were determined to be erroneous and the NWS ignored the temperature data for that date (and others) and made arrangements to have the temperature sensor repaired or replaced. This was done on approximately Dec 26. 2008 because parts had to be ordered and would not be delivered on Christmas Day. This information was provided by the Spokane NWS Science and Operations Officer, Ron Miller.

If additional information is needed, please contact me.

S. Edward Boselly, President
Weather Solutions Group
360.438.2954

DECLARATION: Jeffrey Wayne Colistro
E. 8319 South Riverway
Millwood, Washington 99212

I, Jeffrey Wayne Colistro, make the following Declaration:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one.

I declare (or certify) under penalty of perjury under the laws of the State of Washington That the following statement is true and correct:

1.) I have assisted my mother with general maintenance at the site commonly referred to as 2928 E. Grace, Spokane, Washington 99207 on an "as need basis" for over ten years.
2.) In 2009, the Tenant at 2928 E. Grace, Mr. John Patton requested of my mother assistance in cleaning the short 4 ft. rain gutter above the front porch.
3.) My mother, Sharon A Colistro and I meet with the tenant, Mr. John Patton. He instructed us to clean a small amount of soil that had accumulated inside the rain gutter.
4.) The residence at 2928 and 2924 East Grace is a duplex. Each tenant is responsible for maintaining the interior and exterior of the premise. The tenants are responsible for the care and maintenance of the exterior shrubs, yard, ramp, driveway, walkway, steps, porch and patio including removing debris, snow and ice.
5.) I was a tenant for 5 years at a rental managed by my mother. I was responsible for maintenance of the yard, pathways, driveway, walkway, steps and porch.

Signature: _____ Date: 2/2/12

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

PATRICIA A. COMER Plaintiff Vs. SHARON A. COLISTRO Defendant	No: 09-2-03400-6 DECLARATION OF GARY McDONALD

I, Gary McDonald, live in Spokane, Washington. I lived at 2928 East Grace with my Mother, June McDonald, for approximately three years until November of 2007. In that year, my Mother decided to buy a condominium in the Spokane Valley and we moved out of the duplex. Mrs. Sharon Colistro was our Landlord during the all of the time that we lived on the Grace Street property.

I recall that the house has a basement level and three outside doors. One was the front door into the living room, back yard sliding door off the dining and one from inside the garage into the kitchen. We had use of one half of the double car garage and the driveway leading up to "our" half of the driveway, the lawn area on that side of the driveway and one half of the backyard.

My Mother has some health problems, so I had sole responsibility for the outdoor work around the house. It was part of our lease agreement and the lease agreement of our neighbor, that we each would take care of all of the ordinary

Mary S. Murphy, *Attorney at Law*
606 North Pines, suite 200
Spokane Valley, WA 99206
509-893-4457, FAX 838-2117

householder duties on our sections of the property. I mowed grass in the warm weather, shoveled or blew snow in the winter, in general kept up with repairs. I remember using deicer occasionally, because the house faced the North and would get little sun in the winter to melt any ice that formed. I would have to keep after it especially when there was a lot of wind.

There were separate walkways from each driveway up to the front door and stairway of our homes-the two sides have different addresses.

There were never any drainage problems at the house. There were gutters on the front roof line-we never had any leaks or other problems with them.

Mrs. Colistro always responded quickly to any calls we made to her for help with more difficult repairs or things that just needed to be replaced. I remember one time that I tried to fix a stove myself, but could not get it right. I called Sharon and she had a brand new stove delivered in just a day or two, no questions asked.

We saw Mrs. Colistro regularly, in part because she has a garage in back of the house that she used for storage. She would usually walk around the house when she came to get something from her garage. She didn't knock or bother us, but I would see her just glancing at the exterior, checking, I guessed, to see if everything looked all right.

I had the impression that Sharon took pride in being a good landlord- she was always available and would come herself to take care of things or come with her son to fix what they could do themselves. If there was a more difficult issue or one that needed a professional, she hired someone. Sharon always seemed glad to keep up with things.

I declare that I sign this on this date in the Spokane Valley of Washington and that I do so under Penalty of Perjury according to the Law of this state.

Dated February 29, 2012

Gary McDonald

509-863-2380

Mary S. Murphy, *Attorney at Law*
606 North Pines, suite 200
Spokane Valley, WA 99206
509-893-4457, FAX 838-2117

SUPREME COURT OF THE STATE OF WASHINGTON

PATRICIA COMER,

Respondent,

Vs.

SHARON A. COLISTRO
Petitioner/Defendant

Supreme Court No:_____

Petition for Review

No: 310582 Court of Appeal

CERTIFICATE OF SERVICE

I, Sharon A. Colistro am a resident of Spokane County, State of Washington. The undersigned Petitioner hereby certifies that two original Petitions for Review were delivered to the Court of Appeals, Division III on 05/16/2014 to be forward to the Supreme Court. Another original Petition for Review was served at Counsel Mark Kings Office @ 16201 E. Indiana, Suite 1900, Spokane, Valley, Washington on 5/16/2014.

Sharon A. Colistro Dated: 5/16/2014

Sharon A. Colistro

On this day personally appeared before me Sharon A. Colistro, to me known to be the individual who executed the within and foregoing instrument.

Notary Public
State of Washington
MATTHEW P UTESCH
My Appointment Expires Apr 5, 2016

NOTARY PUBLIC in and for the State of Washington

My Commission expires: April 5, 2016