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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 318052 and 318095

SUPREME COURT OF THE STATE OF WASHINGTON

NATHANIEL (NATE) BOISSO, PERSONAL REPRESENTATIVE
OF THE ESTATE OF CHARLES BOISSO,

Petitioner,

v.

KEVIN PORTER,

Respondent.

PETITION FOR REVIEW

Douglas W. Nicholson, WSBA #24854
Lathrop, Winbauer, Harrel,
Slothower & Denison, LLP
Attorneys for Respondent
P.O. Box 1088/201 W. 7th Avenue
Ellensburg WA 98926
(509) 925-6916

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A. IDENTITY OF PETITIONER

Nathaniel Boisso, personal representative of the Estate of Charles Boisso ("Boisso"), asks this Court to accept review of the Court of Appeals' published decision terminating review designated in Part B below.

B. COURT OF APPEALS' DECISION

Boisso seeks review of the decision of the Court of Appeals (Division Three), filed June 16, 2015 (No. 31805-2-III (consolidated with No. 31809-5-III)). No motion for reconsideration was sought before the Court of Appeals.

A copy of the Published Decision is attached at Appendix A hereto.

C. ISSUES PRESENTED FOR REVIEW

No. 1: Does a claim for specific performance of an alleged executory real estate contract constitute a claim against the estate of a deceased person for purposes of chapter 11.40 RCW?

Sub-Issue: If so, did the Court of Appeals err in holding that respondent's claim for specific performance of an alleged executory real estate contract with the decedent was not a claim against the decedent's estate, and thus did not constitute a creditor's claim under chapter 11.40 RCW?

No. 2: Once letters of administration have been issued in a probate proceeding, must a rejected creditor's claim be filed in the county where the letters of administration were issued, within 30 days of rejection of the claim, or be forever barred?

Sub-Issue: Read together, do RCW 11.40.100(1) and RCW 11.96A.050(5) compel a finding that "the proper court" for filing suit on a rejected creditor's claim is the county where letters of administration have been issued?

Sub-Issue: If so, does the failure to file suit in said county, within the 30-day statute of limitations period, forever bar suit on the rejected creditor's claim? Or, does filing suit in another county within the 30-day deadline toll the statute of limitations?

Sub-Issue: Does the Court of Appeals' opinion undermine, if not totally defeat, the intent of the Legislature, as reflected in the probate code, to limit claims against the decedent's estate, expedite closing the estate, and facilitate distribution of the decedent's property?

D. STATEMENT OF THE CASE

Respondent, Kevin Porter ("Porter"), asserted claims against the decedent arising from an alleged executory contract to purchase the decedent's real property located in Pierce County, Washington.¹ The decedent was a resident of Kittitas County at the time of his death, and the probate of his estate was commenced in the Kittitas County Superior Court in

¹ See Porter's Creditor's Claim (CP 1-2 in Appeal No. 318095), a copy of which is attached at Appendix B hereto.

November 2012.² At the time of the decedent's death, Porter still owed money on the purchase price of the alleged real estate contract.³

On **November 13, 2012**, letters of administration were granted by the Kittitas County Superior Court.⁴ On **December 17, 2012**, pursuant to RCW 11.40.070, Porter filed a Creditor's Claim in the Kittitas County probate action, asserting: "Upon payment of principal balance due, the estate [is requested to] execute a deed in and to the property [in Pierce County] conveying the property to the Claimant."⁵ Porter's Creditor's Claim further stated the amount of his claim against the decedent was "\$116,900".⁶

On **December 31, 2012**, the Personal Representative (Boisso) rejected Porter's Creditor's Claim, and provided the following written warning: "Pursuant to RCW 11.40.100, you must bring suit in *the proper Court* against the Personal Representative within thirty days . . . *otherwise your claim will be forever barred.*" (Emphasis added.)⁷

On **January 29, 2013**, Porter filed suit against Boisso in the *Pierce County Superior Court* on his rejected Creditor's Claim.⁸ Porter's rejected

² CP 25 (Appeal No. 318052).

³ See Appendix B hereto.

⁴ CP 25 (Appeal No. 318052).

⁵ See Appendix B hereto.

⁶ *Id.*

⁷ See the Notice of Rejection of Creditor's Claim (CP 5 in Appeal No. 318095).

⁸ See the Pierce County Complaint (CP 22-35 in Appeal No. 318095), a copy of which is attached at Appendix C hereto.

Creditor's Claim in the Kittitas County Superior Court probate action and his Pierce County Complaint are virtually mirror images of each other.⁹

On **March 22, 2013**, oral argument was heard on Boisso's motion to dismiss Porter's Pierce County action, which was based on two primary grounds: first, because Porter's Complaint on his rejected Creditor's Claim was a "matter" governed by TEDRA, the only proper venue for bringing suit was Kittitas County; second, under the "priority of action rule", the Kittitas County Superior Court already had jurisdiction over the cause; therefore, as the second-filed action, the Pierce County Superior Court was required to concede jurisdiction to that court.¹⁰ Pierce County Superior Court Judge Tollefson agreed, and on **April 12, 2013**, he stayed all further proceedings, and ordered Porter to litigate his claims in the Kittitas County action.¹¹

Later on **April 12, 2013**, Boisso filed a TEDRA petition in the Kittitas County Superior Court, seeking to bar all of Porter's claims under RCW 11.40.100(1) and RCW 11.96A.050(5), because Porter failed to bring suit on his rejected Creditor's Claim in the "proper court" (the Kittitas County Superior Court) within the mandatory 30-day deadline.¹²

Instead of answering the TEDRA petition, Porter filed a motion to

⁹ See Creditor's Claim (Appendix B hereto) and the Complaint (Appendix C hereto).

¹⁰ See CP 95-98 in Appeal No. 318095; see also, *id.* at 11.

¹¹ Judge Tollefson's order (CP 62-63 in Appeal No. 318095).

¹² See CP 6-40 in Appeal No. 318095.

transfer *venue and jurisdiction* of his stayed Pierce County action to Kittitas County.¹³ In granting the motion, on **May 3, 2013**, Judge Tollefson made the following findings *in an order prepared by Porter's counsel*: "Pursuant to [the] Court's Order Staying All Further Proceedings dated April 12, 2013, Plaintiff is required to litigate whatever issues and claims concerning the alleged contract in Kittitas County where the probate was started This action is of a nature that requires change of venue and jurisdiction to Kittitas County, the County in which the probate of the Estate of Charles Boisso was filed."¹⁴ The Pierce County Superior Court file was then transferred to the Kittitas County Superior Court, which resulted in two separate actions in the same court involving the same subject matter (Boisso's TEDRA petition filed April 12, 2013 (CP 6-21 in Appeal No. 318095) and the subsequently transferred Pierce County action (CP 22-35 in Appeal No. 318095)).

On **May 28, 2013**, the Kittitas County Superior Court granted Boisso's TEDRA petition, and entered an order and judgment dismissing Porter's claims as time-barred under RCW 11.40.100(1).¹⁵ On **July 3, 2013**, the Kittitas County Superior Court dismissed Porter's transferred Pierce County action on the grounds of res judicata and collateral estoppel.¹⁶ Porter then ap-

¹³ See Judge Tollefson's order, CP 66 at ¶¶1.4-1.5 (Appeal No. 318095).

¹⁴ CP 65-67 in Appeal No. 318095.

¹⁵ See Order at CP 300-302 and Judgment at 318-21 (Appeal No. 318095).

¹⁶ See Order at CP 28-29 and Judgment at CP 31-33 (Appeal No. 318052).

pealed both trial court decisions to Division Three of the Court of Appeals, which consolidated both cases.¹⁷

E. SUMMARY OF ARGUMENT

In reversing the trial court, the Court of Appeals erred in finding that Porter's claim for specific performance of his alleged executory real estate contract with the decedent was not a claim against the decedent or his estate within the meaning of the non-claim statute, chapter 11.40 RCW. The Court of Appeals thus held this claim was not subject to the 30-day limitations period for filing suit in "the proper court", as required under RCW 11.40.100(1). In doing so, the Court of Appeals failed to address the interplay between chapters 11.40 and 11.96A (the Trust and Estate Dispute Resolution Act, or "TEDRA"). In enacting TEDRA in 1999, however, the Legislature made clear that the provisions of TEDRA were intended to supplement the provisions of chapter 11.40. *See* RCW 11.96A.080(2). TEDRA was enacted as a special proceeding for the resolution of *all matters* involving the assets of a decedent's estate. RCW 11.96A.010.

Porter's claim for specific performance of his alleged executory real estate contract is clearly a "matter" within the purview of TEDRA. *See* RCW 11.96A.030(3). It is thus a claim against the decedent under chapter 11.40 RCW, and subject to the 30-day limitations period under RCW 11.40.100(1).

¹⁷ See Appendix A hereto.

This conclusion is further driven home by the fact that title to the decedent's Pierce County real property remained with the decedent as long as Porter's alleged contract to purchase the real property remained executory. *See, e.g., Tomlinson v. Clarke*, 118 Wn.2d 498, 504, 825 P.2d 706 (1992).

Moreover, once letters of administration have been issued in a probate proceeding in one county, all further proceedings must be had only in that county, not somewhere else. *See* RCW 11.96A.050(5). Compliance with the requirements of RCW 11.40.100(1) and RCW 11.96A.050(5) create mandatory, bright-line rules requiring strict compliance. Thus, Porter's failure to timely file suit in the proper court (i.e., the Kittitas County Superior Court where letters of administration had been issued) is fatal to his claims against the decedent. To hold otherwise, as the Court of Appeals did, defeats the intent of the Legislature, as embodied in the probate code. *See Nelson v. Schnautz*, 141 Wn. App., 446, 475, 170 P.3d 69 (2007), *review denied*, 163 Wn.2d 1054 (2008).

F. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. This Case Meets the Requirements for Review.

This case presents an issue of first impression and state-wide significance regarding the statute of limitations for filing suit on a rejected creditor's claim under RCW 11.40.100(1). The statute plainly states: "If the personal representative rejects a claim, . . . the claimant must bring suit against the

personal representative *within thirty days . . . in the proper court . . .* or the claim will be forever barred." (Emphasis added.) The primary issues presented are these: What is "the proper court" for filing suit on a rejected creditor's claim under RCW 11.40.100(1)? Does filing suit in an "improper court" toll the 30-day limitations period?¹⁸

For the reasons stated in the above Summary of Argument, the issues presented involve a significant question of law and substantial public interest. If the Court of Appeals' opinion is allowed to stand, it would undermine the legislative intent in enacting TEDRA as part of the probate code. "The intent of the probate code is to limit claims against the decedent's estate, expedite closing the estate, and facilitate distribution of the decedent's property." *Nelson*, 141 Wn. App. at 475 (citing *Bellevue Sch. Dist. v. Brazier Constr. Co.*, 103 Wn.2d 111, 120, 691 P.2d 178 (1984)); *see also*, RCW 11.96A.010, .020, .050(5), .090, .100, .260, and .270, which further evince the legislative intent to preferably resolve all disputes over a decedent's estate in a single judicial proceeding.

Accordingly, Boisso asks this Court to reverse the Court of Appeals and affirm the trial court's judgment dismissing, as time-barred, all claims

¹⁸ Because it erred in disregarding the fundamental interplay between chapters 11.40 and 11.96A RCW, and wrongly held that timely filing suit in *any superior court* meets RCW 11.40.100(1)'s requirement of filing suit in "*the proper court*", the Court of Appeals did not address Porter's "tolling" argument, finding that it did not apply in this case. *See* Appendix A at 6, n. 2.

asserted in Porter's Creditor's Claim (Court of Appeals Case No. 318095), and the trial court's judgment dismissing Porter's complaint on his rejected Creditor's Claim (Court of Appeals Case No. 318052).

2. A Claim for Specific Performance of an Executory Real Estate Contract is a "Matter" Governed by TEDRA.

TEDRA was enacted as a special proceeding for the resolution of *all matters* involving the assets of a decedent's estate, which would include the real property in question here. RCW 11.96A.010 sets forth the Legislature's intent in enacting TEDRA: "The overall purpose of this chapter is to set forth generally applicable statutory provisions for *the resolution of disputes and other matters* involving trusts and estates in a single chapter under Title 11 RCW." (Emphasis added.)

RCW 11.96A.020(1) states the clear intent of the Legislature to grant extremely broad authority to the superior courts under TEDRA: "It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle: (a) *All matters*, concerning the estates and assets of . . . deceased persons . . ." (Emphasis added.)

RCW 11.96A.030(3) broadly defines "*matter*" to include "any issue, question, or dispute involving . . . any non-probate asset, *or with respect to any other asset or property interest passing at death*". (Emphasis added.) This "may include, without limitation, questions relating to (i) [t]he construction of wills, trusts, community property agreements, and other writings . . ."

RCW 11.96A.080(1) expressly allows "a judicial proceeding *for the declaration of rights* or legal relations *with respect to any matter*, as defined by RCW 11.96A.030". (Emphasis added.) TEDRA thus grants "plenary powers to the trial court". *In re McKean*, 144 Wn. App. 333, 343, 183 P.3d 317 (2008). This plenary power extends to the probate court under TEDRA. *Estate of Black*, 116 Wn. App. 492, 498, 66 P.3d 678 (2003).

Porter seeks specific performance compelling Boisso to honor his alleged contract to purchase the decedent's real property, which is an asset of the decedent's estate. He also seeks a declaration of the parties' rights under the alleged contract. Alternatively, he seeks monetary damages against the Estate. Each of these issues involves a "*matter*" under TEDRA.

3. Porter's Claim for Specific Performance is a Transitory Action That Was Required to be Filed Against the Personal Representative in Kittitas County, Not a Local, In Rem Action That Could be Filed in Pierce County.

"A real estate contract is an agreement for the purchase and sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. Legal title does not pass to the purchaser until the contract price is paid in full." *Tomlinson*, 118 Wn.2d at 504. This Court has "long recognized the distinction between jurisdiction to adjudicate title to land and jurisdiction to settle the parties' personal interests in real estate." *In re Kowalewski*, 163 Wn.2d 542, 548-49, 182 P.3d 426 (2008). Thus, "a suit for specific performance of a contract to convey real

estate is a transitory one [which] affects the parties to the action personally, but does not determine title." *Id.* at 549 (quoting *Rosenbaum v. Evans*, 63 Wash. 506, 508-09, 115 P. 1054 (1911)).

In holding Porter's claim was not against the decedent, the Court of Appeals erred in mischaracterizing Porter's interest in the decedent's real property. The cases relied upon by the Court of Appeals involved community property interests, or similar situations, in which a party was seeking to remove his or her ownership interest in the real property from the inventory of the estate's assets. Here, by contrast, until Porter paid off the balance of the purchase price, his alleged interest in the real property was no different than that of a tenant. Unlike a spouse's one-half interest in title to community property, Porter had no such interest in title to the decedent's property. Thus, his suit for specific performance, being transitory in nature, had to be brought in the Kittitas County Superior Court, where the decedent died and where the personal representative rejected his creditor's claim. RCW 11.96A.050(5).

4. Porter's Failure to Timely File Suit in the Kittitas County Superior Court Forever Bars His Claim.

The issue here turns upon the interplay between RCW 11.40 and RCW 11.96A. The analysis must begin with the well-settled maxim of statutory construction: "Statutes relating to the same subject matter are to be considered together to ascertain legislative policy and intent." *Bennett v. Hardy*, 113 Wn.2d 912, 926, 784 P.2d 1258 (1990). This maxim applies with full

force and effect to RCW 11.40 and RCW 11.96A. Both statutes are part of Title 11 RCW; and RCW 11.96A.080(2) clearly states: "The provisions of this chapter should not supersede, *but shall supplement*, any otherwise applicable provisions and procedures contained in this title, including without limitation those contained in chapter . . . *11.40 . . .*" (Italics added.)

Chapter 11.40 RCW governs claims against a decedent's estate. RCW 11.40.010 plainly states: "A person having a claim against the decedent may not maintain an action on the claim unless . . . the claimant has presented the claim as set forth in this chapter." RCW 11.40.070 governs the presentation of a claim against a decedent's estate. RCW 11.40.100 sets forth the procedure that must be followed once a creditor's claim has been rejected. Subsection (1) clearly states that suit against the personal representative must be brought "in the proper court" within 30 days "or the claim will be forever barred." The statute is unambiguous. *See Estate of Stover*, 178 Wn. App. 550, 558, 315 P.3d 579 (2013).

"The legislature is presumed to enact laws with full knowledge of existing laws." *Thurston County v. Gorton*, 85 Wn.2d 133, 138, 530 P.2d 309 (1975). Thus, when the Legislature enacted RCW 11.96A.050(5) as part of TEDRA, it must be presumed that the Legislature was aware that this statute and RCW 11.40.100(1) both addressed the issue of where a creditor's claim must be filed. *See, e.g., Bennett*, 113 Wn.2d at 926.

Under TEDRA, therefore, the words "the proper court" must have reference to something more than just the superior court of any county in this state. Before TEDRA, chapter 11.96A RCW was enacted, by statutory definition, a creditor's claim had to be filed in the superior court. *See* RCW 2.08.010 (every superior court has "original jurisdiction in all cases [involving] all matters of probate"). Because chapter 11.96A RCW supplements chapter 11.40, determining "the proper court" for filing suit on a rejected creditor's claim requires reference to RCW 11.96A.050 (5), which mandates in relevant part: "Once letters testamentary or of administration have been granted in the state of Washington, ***all orders, settlements, trials, and other proceedings under this title*** shall be had or made in the county in which such letters have been granted." (Emphasis added.)

Because letters of administration were granted by the Kittitas County Superior Court before Porter submitted his rejected Creditor's Claim, he was required to bring suit in the Kittitas County Superior Court. He did not have the option of bringing suit in Pierce County, or anywhere else.

To hold otherwise would render meaningless or superfluous RCW 11.40.100's use of the words "in the proper court". In fact, it would require striking them from the statute altogether. This would, however, violate several cardinal rules of statutory construction. "In interpreting a statute, it is the duty of the court to ascertain and give effect to the intent and purpose of the

legislature, as expressed in the act." *Burlington Northern v. Johnston*, 89 Wn.2d 321, 326, 572 P.2d 1085 (1977). "Related statutory provisions are interpreted in relation to each other and all provisions harmonized." *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699, 708, 985 P.2d 262 (1999). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). "A statute that is clear on its face is not subject to judicial interpretation." *Clark v. Falling*, 92 Wn. App. 805, 810, 965 P.2d 644 (1998).

The unambiguous words - "the proper court" - clearly refer to a single court. Had the Legislature intended that suit on a rejected creditor's claim could be brought in any superior court, it would not have added the words, "in the proper court", to RCW 11.40.100(1). Instead of stating, "the claimant must bring suit *in the proper court* against the personal representative within thirty days", the statute would simply state: "the claimant must bring suit against the personal representative within thirty days."

5. RCW 11.40.100(1) and RCW 11.96A.050(5) are Compulsory, Bright-Line Rules Requiring Strict Compliance; Therefore, the 30-Day Deadline for Bringing Suit in "the Proper Court" Cannot be Tolledd by Bringing Suit in Another Court Within the Deadline.

RCW 11.40.100(1) unequivocally states that suit on a rejected creditor's claim "*must*" be brought in the proper court within thirty days. RCW 11.96A.050(5) likewise states that, once letters of administration have been

granted, all of the proceedings "**shall**" take place in the county where such letters were granted. The words "must" and "shall" create an imperative duty that cannot be circumvented.

"It is well settled that the word `shall' in a statute is presumptively imperative and operates to create a duty." *Erection Co. v. Dep't of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288 (1993). "The word `shall' in a statute thus imposes a mandatory requirement unless a contrary legislative intent is apparent." *Id.* No such contrary legislative intent appears in RCW 11.40.100 and RCW 11.96A.050. Instead, the plain language of the statutes imposes a compulsory duty; and because their language is unambiguous, they evince a clear legislative intent that must be given effect. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

Read together, RCW 11.96A.050(5) and RCW 11.40.100(1) create bright-line rules, and the failure to comply with them is fatal. *See, e.g., Wagg v. Estate of Dunham*, 107 Wn. App. 35, 26 P.3d 287 (2001); *Cloud v. Summers*, 98 Wn. App. 724, 991 P.2d 1169 (1999); *Ruth v. Dight*, 75 Wn.2d 660, 453 P.2d 631 (1969); *In re Estate of Wilson*, 8 Wn. App. 519, 507 P.2d 902 (1973), *review denied*, 82 Wn.2d 1010 (1973).

In *Wagg*, the court interpreted former RCW 11.40.080, which stated, in relevant part: "No holder of any claim against the decedent shall maintain an action thereon, unless the claim shall have been first presented as provided

in this chapter." 107 Wn. App. at 39. The Court stated: "To read former RCW 11.40.080 in the manner suggested by Mr. Wagg - that delivery or service of the lawsuit provides notice to the personal representative of the claims - would, in the words of the superior court, `render the statute meaningless.'" *Id.* at 40. "The language of former RCW 11.40.080, as well as its interpretation by case law, **has produced a bright-line rule** that required Mr. Wagg to file a notice of claim with the estate prior to filing the lawsuit in Superior Court." *Id.* (emphasis added).

In *Cloud*, Division One upheld the estate's rejection as untimely a lawsuit filed in federal court within the 4-month time limitation under RCW 11.40.010. The statute provides that a creditor's claim is "forever barred" if the creditor fails to file a claim within four months after notice of the decedent's death. *Cloud*, 98 Wn. App. at 736, 738. The court stated:

Darrell's complaint against the Summer's Estate, which he filed in federal court within the 4-month time limitation, is not sufficient to satisfy the Washington Probate Notice to Creditor statute, RCW 11.40. ***This statute creates a bright line rule that required Darrell to file a notice of claim with the personal representatives. Substantial compliance is not sufficient.*** Darrell's failure to comply with this rule is fatal, notwithstanding the fact that the Summer's Estate was fully aware of the nature of the claim for other reasons, i.e., Darrell's federal lawsuit.

Id. at 738 (emphasis added).

In *Ruth*, this Court stated:

As to the action against the deceased doctor's estate, however, it appears to be barred by the nonclaim statute relating to the fil-

ing of claims in decedent's estates. In contrast to the 3-year statute of limitations (RCW 4.16.080(2)), the language of the nonclaim statute (RCW 11.40.010), is more precise and definitive and less susceptible of interpretation. ***Either a claim against the estate is filed within 6 months of first publication of notice to creditors, or it is barred.*** Two ministerial acts, each precisely ascertainable in time, fix the time limits: The first publication of notice to creditors [RCW 11.40.010] and the filing of the creditor's claim [RCW 11.40.080].

RCW 11.40.080 states:

'No holder of any claim against the estate shall maintain an action thereon, unless the claim shall have been first presented as herein provided.'

The nonclaim statute is mandatory and cannot be subject to enlargement by interpretation; and it cannot be waived.

Ruth, 75 Wn. 2d at 668-69 (emphasis added).

In *Estate of Wilson*, Division One held: "Compliance with the statute [RCW 11.40.010] is mandatory. A debt which accrued during the lifetime of the decedent is barred and may not be paid unless a claim for its payment was filed within the 4-month period. . . . ***Equitable considerations may not mitigate the strict requirements of the statute*** where a timely claim has not been filed by the creditor. . . ." 8 Wn. App. at 525 (citations omitted) (emphasis added).

There is no logical reason why the bright-line rules created by RCW 11.40.100(1) and RCW 11.96A.050(5) should not also apply here to reject Porter's "tolling" argument. To allow Porter to file suit and prosecute his action in the wrong county would undermine the legislative intent and sound

policy of expeditiously resolving creditor's claims against a decedent's estate. *Nelson*, 141 Wn. App. at 475; RCW 11.96A.010, .020. To accept Porter's tolling argument would allow a claimant, whose creditor's claim was rejected, to file suit in any county, regardless of where letters of administration were granted. This could result in multiple lawsuits in different counties, depending upon the number of executory real estate contracts the decedent had for properties he or she owned throughout the state, and the number of creditor's claims being asserted in the various counties in which the properties were located. Such piecemeal litigation is not what the Legislature intended in enacting TEDRA. *Id.*

G. CONCLUSION

RCW 11.40.100(1) and RCW 11.96A.050(5) required Porter to file suit on his rejected Creditor's Claim for specific performance and unjust enrichment in the Kittitas County Superior Court within thirty (30) days after his Creditor's Claim was rejected, or the claim would be forever barred. Porter failed to do so, and filing suit within thirty (30) days in the Pierce County Superior Court did not toll RCW 11.40.100(1)'s mandate that suit must be timely brought in "the proper court", which requires strict compliance. This Court should, therefore, affirm the trial court's rulings and reverse the decision of the Court of Appeals.

Respectfully submitted,

LATHROP, WINBAUER, HARREL,
SLOTHOWER & DENISON, LLP

By: 

Douglas W. Nicholson, WSBA #24854
Attorney for Respondent
Nathaniel Boisso

CERTIFICATE OF SERVICE

I certify that on the 10th day of July, 2015, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Attorneys for Appellant:

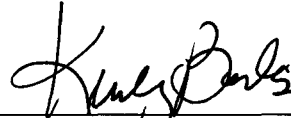
Stephen A. Burnham
Bryce Haggard Dille
317 S. Meridian
Puyallup WA 98371-5913

Via First Class Mail

Attorney for the Estate of Charles Boisso:

Jeffrey D. Winter
604 N. Main Street
Ellensburg WA 98926

Via E-Mail:
jdwinter@hotmail.com



Kimberly Bailes

APPENDIX A

FILED
JUNE 16, 2015
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

KEVIN PORTER,)	
)	
Appellant,)	No. 31805-2-III
)	(cons. with No. 31809-5-III)
)	
v.)	
)	
NATHANIEL (NATE) BOISSO,)	
PERSONAL REPRESENTATIVE OF)	PUBLISHED OPINION
THE ESTATE OF CHARLES BOISSO,)	
)	
Respondent.)	

SIDDOWAY, C.J. — A creditor of a decedent’s estate who is notified by the personal representative of rejection of his claim is required by Washington’s nonclaim statute to bring suit within 30 days, failing which his claim is forever barred. RCW 11.40.100. The statute provides that the personal representative’s notification of rejection “must advise the claimant that the claimant must bring suit in *the proper court* against the personal representative within thirty days.” *Id.* (emphasis added). These consolidated cases involve a creditor’s claim filed in a Kittitas County probate that was dismissed because the holder of the claim filed his post-rejection lawsuit in the Superior Court for Pierce County. They call on us to decide the meaning of “the proper court” for a post-rejection suit.

We hold that to the extent Kevin Porter's claims for relief asserted in his Pierce County action were subject to the nonclaim statute (and some were not), "the proper court" in which to assert them was the superior court. His action, which was transferred to Kittitas County on Mr. Porter's own motion for change of venue, should not have been dismissed nor should the Kittitas County court have quieted title to the real property that was at issue in Charles Boisso's estate. We reverse several orders and the final judgments entered in both matters and remand for proceedings consistent with this opinion.

FACTS AND PROCEDURAL BACKGROUND

On November 13, 2012, Kittitas County granted letters of administration for the probate of the estate of Charles Boisso. Kevin Porter filed notice of a creditor's claim in the probate action several weeks later, on December 17. His notice alleged that he had entered into a contract to purchase two one-half-acre parcels of property owned by the late Mr. Boisso, located in Pierce County; that the agreed purchase price had been \$120,000; and that he had, since 1999, paid a total of \$116,900. He asked that upon his payment of the balance owed the estate deliver to him a statutory warranty deed.

The estate rejected Mr. Porter's claim on December 31. Its notice of rejection stated that "[p]ursuant to RCW 11.40.100, you must bring suit in the proper Court against the Personal Representative within thirty days after the date of the postmark of the

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mailing of this Notice, and that otherwise your claim will be forever barred.” Clerk’s Papers (CP) (No. 318095) at 5.

On January 29, 2013, Mr. Porter filed suit in Pierce County. He would later explain that he did so because his claim involved real property located in Pierce County and he was concerned with a series of Washington decisions that construed RCW 4.12.010, which governs the county in which many actions involving real property “shall be commenced,” as jurisdictional. The cases “continually affirmed that RCW 4.12.010 governs jurisdiction affecting local actions and that local actions commenced in the wrong county must be dismissed.” *Ralph v. State Dep’t of Natural Resources*, 182 Wn.2d 242, 267, 343 P.3d 342 (2014) (Wiggins, J., dissenting) (citing cases). After briefing in this appeal was completed, our Supreme Court decided *Ralph*, in which a five-member majority overruled that line of cases, holding that RCW 4.12.010(1) prescribes only venue, not jurisdiction. *Ralph*, 182 Wn.2d at 259.

Mr. Porter’s Pierce County complaint disclosed the Kittitas County probate, his creditor’s claim, and the estate’s notice of rejection. It described the terms of his alleged purchase agreement and his alleged substantial performance. Attached to the complaint was a handwritten letter from the late Mr. Boisso to Mr. Porter dated July 17, 2001, that included references to a mortgage, an interest rate, and a principal balance.¹ CP (No.

¹ The text of the handwritten note is included in an appendix to this opinion.

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318095) at 34-35. Mr. Porter's prayer for relief sought a declaratory judgment specifying his right and interest in the property and an order compelling specific performance; alternatively, he sought damages for unjust enrichment.

The estate moved to dismiss the complaint, arguing that venue and jurisdiction were improper. After hearing argument, the Pierce County court initially stayed proceedings, later entertaining a motion by Mr. Porter for change of venue to Kittitas County. It eventually entered an order "Transferring Venue and Jurisdiction" to Kittitas County on May 3, 2013. CP (No. 318095) at 231-33.

Meanwhile, the estate had filed a petition in the Kittitas County probate proceeding for an order clearing title to the Pierce County properties. It argued that by filing his complaint in Pierce County, Mr. Porter failed to file suit in "the proper court" and was forever barred from asserting a claim. As further support for the requested relief, it argued that Mr. Porter had no contract right to purchase the Pierce County property but instead had been a tenant paying rent, attaching a 1999 rental agreement signed by Mr. Porter as support. After hearing from the parties, the court granted the relief requested by the estate on the basis that Mr. Porter failed to file a complaint in Kittitas County and, by statute, his claims were barred. It did not address whether the late Mr. Boisso and Mr. Porter had entered into a real estate purchase and sale agreement.

In May 2013, the estate filed a motion to dismiss Mr. Porter's complaint on collateral estoppel grounds, arguing that the issues presented had been litigated and

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resolved against Mr. Porter through the quiet title proceeding. The court granted the estate's motion and dismissed Mr. Porter's complaint with prejudice. It awarded the estate attorney fees in the probate action and costs in both proceedings, for a total of \$29,942.

Mr. Porter appeals orders and final judgments entered in both proceedings.

ANALYSIS

Washington's nonclaim statute, RCW 11.40.010, provides that "[a] person having a claim against the decedent may not maintain an action on the claim unless . . . the claimant has presented the claim as set forth in this chapter." Once a claim is filed, the personal representative shall allow or reject each claim, failing which the statute allows the claimant to petition the court for a hearing to determine whether the claim should be allowed or rejected. RCW 11.40.080.

Where, as here, a creditor's claim is rejected by the personal representative, RCW 11.40.100(1) provides that "the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred." It goes on to provide that the personal representative's notification of rejection must advise the claimant that the claimant must bring suit in the *proper court* against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

Id. (emphasis added).

Mr. Porter assigns error to the court's judgment quieting title to the Pierce County properties in the estate, arguing that his claims asserted in the Pierce County action are not claims against a decedent subject to the nonclaim statute and, alternatively, that his commencement of the Pierce County action satisfied the requirement that he timely file suit in "the proper court."²

We first address whether the claims asserted by Mr. Porter in Pierce County were subject to the nonclaim statute. Finding that at least one of them was, we turn to whether commencement of his action in Pierce County satisfied a requirement that he timely bring action in "the proper court."

I. Mr. Porter's principal claims are not "claims against a decedent"

Chapter 11.40 RCW does not define the meaning of "claim against the decedent" as used in the nonclaim statute. In *Estate of Earls*, 164 Wn. App. 447, 448, 262 P.3d 832 (2011), our court stated that the nonclaim statute "encompasses every species of liability a personal representative can be called upon to pay out of the estate's general funds." Another recent decision of our court held that "[t]o constitute a *claim against the estate of a deceased person*, an obligation must consist of a *debt* incurred by or for the decedent

² Mr. Porter also assigns error on the basis that his filing of the Pierce County action "tolled" the 30-day limitation period and that the superior court erred in applying claim and issue preclusion to dismiss his complaint. Given our decision on the other errors identified, a "tolling" analysis does not apply and reversal of the trial court's decision dismissing Mr. Porter's complaint is automatic. We do not address those assignments of error further.

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during his lifetime.’” *Witt v. Young*, 168 Wn. App. 211, 218, 275 P.3d 1218 (2012)
(internal quotation marks omitted) (quoting *Olsen v. Roberts*, 42 Wn.2d 862, 865-66, 259
P.2d 418 (1953)).

Mr. Porter argues that the claims asserted in his Pierce County action were not claims against a decedent because he was seeking recognition of his interest in the property and enforcement of a right to complete the purchase.

With respect to his claims for declaratory relief and specific performance, a number of Washington cases support Mr. Porter’s position. In *Baird v. Knutzen*, 49 Wn.2d 308, 310, 301 P.2d 375 (1956), the Bairds had granted a three-year logging easement to the Knutzens in exchange for an annual rental and an agreement that the Knutzens would convey 80 acres of the logged timberland to the Bairds at the conclusion of the three-year term. The Knutzens used the easement for the three years but failed to pay the full amount of rent and failed to convey the 80 acres. Ms. Knutzen died thereafter. The Bairds later sued, seeking specific performance of the obligation to convey the 80 acres. They were met by the defense that they had failed to file a creditor’s claim in the probate proceedings of Ms. Knutzen’s estate as required by former RCW 11.40.010 (REM. REV. STAT. § 1477 (Supp. 1923)). The court affirmed the trial court’s order for specific performance finding that “[a]n action for specific performance of a contract is not within the purview of the statute.” *Baird*, 49 Wn.2d at 310 (citing *Southwick v. Southwick*, 34 Wn.2d 464, 208 P.2d 1187 (1949)).

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In *O'Steen v. Estate of Wineberg*, 30 Wn. App. 923, 934, 640 P.2d 28 (1982), Wineberg had agreed to give O'Steen ten percent of his stock in a petroleum company in satisfaction of a debt, but title to the shares was never transferred. When Wineberg's wife died, all of the shares were inventoried as community property in her estate. O'Steen filed no creditor's claim. The court held that his subsequent lawsuit was not barred by the nonclaim statute, because "RCW 11.40.010 applies only where the claim is a general charge against the assets of the estate. It does not apply where the claim is for specific property in the estate." *Id.* at 934 (citing *Compton v. Westerman*, 150 Wash. 391, 273 P. 524 (1928)).

In *Compton*, the court held the nonclaim statute did not apply to a party's request for the return of property given as collateral where the secured obligation had been satisfied, explaining:

It does not seem to us that the statute of nonclaim has any application to the facts in this case. The respondent is not seeking to recover anything from the assets of the estate. She is not depleting the estate in any way. The property which was awarded to her did not belong to the estate, and no money judgment of any character was sought. Respondent is simply defending an action brought by the estate to recover money from her as executrix.

The general rule is that the cestui que trust, for whom the defendant was in his lifetime a trustee, does not have to make a claim against the estate as long as the particular property he is claiming can be identified, and is not in any way commingled with the assets of the estate, the theory being that he is not depleting the estate, and is not claiming anything which belongs to the estate. He is merely claiming his own property. Woerner *American Law of Administration*, Vol. 3, § 402. Many authorities

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approving the rule are quoted with approval in *Davis v. Shepard*, 135 Wash. 124, 237 P. 21[(1928), 41 A. L. R. 163].

Compton 150 Wash. at 396-97 (emphasis omitted). Several other cases hold that a party who asserts an interest in property that might otherwise be inventoried as part of the estate is not asserting a creditor's claim required to be filed under the nonclaim statute. See *Witt*, 168 Wn. App. at 218 (party claiming a community property-like interest resulting from a meretricious relationship was not asserting a claim subject to chapter 11.40 RCW); *Olsen*, 42 Wn.2d at 865-66 (tenant in common asserting an ownership interest in property is not a creditor); *Smith v. McLaren*, 58 Wn.2d 907, 909, 365 P.2d 331 (1961) (filing of a creditor's claim is not a condition precedent to an action by a former spouse to recover his or her share of community property).

In this case we are dealing with an alleged real estate contract. Washington cases recognize that a vendee under a real estate contract has a “valid and subsisting interest in property.” *Cascade Sec. Bank v. Butler*, 88 Wn.2d 777, 781-83, 567 P.2d 631 (1977) (quoting *Griffith v. Whittier*, 37 Wn.2d 351, 353, 223 P.2d 1062 (1950)); *Oliver v. McEachran*, 149 Wash. 433, 438, 271 P. 93 (1928) (“Undoubtedly such purchaser does have a right of possession and a right to acquire title in accordance with the terms of the contract.”). In a 1992 decision, the Washington Supreme Court quoted with approval a bankruptcy court's observation that “Washington law considers the purchaser's interest under the real estate contract as a property interest and the seller's interest under that

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contract as a lien-type security device.’” *Tomlinson v. Clarke*, 118 Wn.2d 498, 509, 825 P.2d 706 (1992) (quoting *In re McDaniel*, 89 B.R. 861, 869 (Bankr. E.D. Wash. 1988)). For probate purposes, Washington cases recognize that the *vendor’s* interest under such a contract is personal property rather than real property. *In re Fields’ Estate*, 141 Wash. 526, 528, 252 P. 534 (1927) (holding that because decedent’s *vendor’s* interest was personal property, it did not pass to appellants); *In re Eilermann’s Estate*, 179 Wash. 15, 19, 35 P.2d 763 (1934) (because *vendor’s* interest in a real estate contract is personal property, it is taxable in the state of the owner’s domicile, not the state wherein the land lies).

Mr. Porter’s claims for specific performance and declaratory judgment asserted his property interest as vendee under an alleged real estate contract. He was seeking to ensure that the estate properly excluded the Pierce County parcels from its inventory, recognized the personal property character of the *vendor’s* interest held by Mr. Boisso at the time of his death, and honored Mr. Porter’s right to acquire title in accordance with the terms of his alleged agreement with Mr. Boisso. Mr. Porter was proposing to *pay* money, not to collect a debt incurred by Mr. Boisso during his lifetime. Consistent with the foregoing case law, Mr. Porter’s claims for specific performance and declaratory judgment were not claims against a decedent within the meaning of the nonclaim statute.

As an alternative to his claims for specific performance and declaratory judgment, however, Mr. Porter’s Pierce County complaint asserted a restitution claim:

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Alternatively, the plaintiff is entitled to damages for unjust enrichment because he has continually resided on the property from 1999 to the present date and has expended thousands of dollars in maintaining and improving the property, all of which expenditures and improvements were made with the full knowledge of Charles Boisso.

CP (318095) at 24. His prayer for relief included the alternative of “a judgment for damages for unjust enrichment in an amount to be fully proven at trial.” *Id.* at 25. The unjust enrichment claim is not inconsequential. The estate contends that Mr. Porter’s alleged agreement with Mr. Boisso fails to comply with the statute of frauds. If Mr. Porter is unable to demonstrate facts entitling him to specific performance despite noncompliance with the statute of frauds, restitution is his sole remaining claim.

A claim for unjust enrichment is, within the language of our Supreme Court’s decision in *Earls*, 164 Wn. App. 447, a “species of liability a personal representative can be called upon to pay out of the estate’s general funds” and thereby a “claim against the decedent” within the meaning of RCW 11.40. We therefore turn to whether Mr. Porter brought suit on his unjust enrichment claim in “the proper court.”

II. The superior court is the proper court

RCW 11.40.100(1) does not itself create a requirement that a creditor with a claim against the estate file its post-rejection lawsuit in “the proper court.” Rather, it requires the personal representative to advise the claimant that it must bring suit in “the proper court.” The estate has collapsed language in the statute into a singular requirement that a claimant “bring suit against the personal representative *within thirty days . . . in the*

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proper court . . . or the claim will be forever barred.” Br. of Resp’t at 1. But the requirement that the claimant timely file suit and the requirement that the personal representative warn the claimant are distinct and appear several sentences apart in the applicable subsection of the nonclaim statute. The subsection reads in its entirety:

If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant’s agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

RCW 11.40.100(1) (emphasis added).

Plainly read, the statute recognizes that a proper court exists and that the claimant must be warned about it, but it says nothing about which court is proper. Determining “the proper court” requires us to review other sources of law.

“Subject matter jurisdiction is a tribunal’s authority to adjudicate the type of controversy involved in the action.” *Shoop v. Kittitas County*, 108 Wn. App. 388, 393, 30 P.3d 529 (2001). “Venue rules serve to limit a plaintiff’s choice of forum to ensure that the locality of a lawsuit has some logical relationship to the litigants or the subject

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matter of the dispute.” *Id.* at 396 (citing JACK H. FRIEDENTHAL, MARY KAY KANE & ARTHUR R. MILLER, CIVIL PROCEDURE § 2.1 at 9-10 (3d Ed. 1999)).

Our state constitution provides, “The superior court shall have original jurisdiction in all cases at law which involve . . . all matters of probate.” CONST. art. IV, § 6. It further provides that “[t]he superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.” *Id.*³ The Washington Supreme Court has interpreted this language as giving to the superior court “‘universal original jurisdiction,’” thereby preventing the legislature from limiting subject matter jurisdiction as among superior courts located in different counties. *Ralph*, 182 Wn.2d at 252 (quoting *Moore v. Perrott*, 2 Wash. 1, 4, 25 P. 906 (1891)).

In 1999, the legislature adopted the Trust and Estate Dispute Resolution Act (TEDRA) for the stated purpose of “set[ting] forth generally applicable statutory provisions for the resolution of disputes and other matters involving trusts and estates in a single chapter under Title 11 RCW.” RCW 11.96A.010. TEDRA includes both a

³ The estate has suggested that use of the definite article “the” unambiguously refers to a single court, implying that it must refer to a superior court in a particular county. Br. of Resp’t at 12-13. But both the constitution and the relevant statutes speak predominantly, if not exclusively, of “the superior court” as a single court that has a presence in all counties. While Washington laws also sometimes speak of multiple “superior courts,” then, it is entirely reasonable to construe “the proper court” as referring to the single, statewide superior court recognized in the state constitution.

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jurisdiction and a venue provision. The jurisdiction provision provides that “[t]he superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances.” RCW 11.96A.040(1). It also provides

[t]he subject matter jurisdiction of the superior court applies without regard to venue. A proceeding or action by or before a superior court is not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action.

RCW 11.96A.040(4).

TEDRA’s venue provision provides that the original venue for proceedings pertaining to the probate of wills and most other estate administration matters is “in any county of the state of Washington that the petitioner selects,” subject to a party’s right to make a timely request to change venue to a county given priority by statute. RCW 11.96A.050(4). “Once letters testamentary or of administration have been granted in the state of Washington,” however, “all orders, settlements, trials, and other proceedings under this title must be had or made in the county in which such letters have been granted unless venue is moved as provided in [RCW 11.96.050(4)].” RCW 11.96A.050(5).

The general provisions regarding venue and jurisdiction in Washington courts appear in chapter 4.12 RCW. RCW 4.12.030 identifies grounds for changing the venue of an action, including “[t]hat the county designated in the complaint is not the proper county.” RCW 4.12.030(1). Where a motion for change of venue on the basis that the

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action has been brought in the wrong county is allowed, “the change shall be made to the county where the action ought to have been commenced.” RCW 4.12.060. As our Supreme Court recently observed in *Ralph*, “RCW 4.12.030(1) contemplates that actions will inevitably be filed in the wrong county and RCW 4.12.060 authorizes moving an improperly filed action ‘to the county where the action ought to have been commenced.’” *Ralph*, 182 Wn.2d at 255 (emphasis omitted) (quoting RCW 4.12.060). Absent a request for a change of venue, an action brought in the wrong county “may nevertheless be tried therein unless the defendant, pursuant to the provisions of rule 12, requests that the trial be held in the proper county and files an affidavit of merits.” CR 82(b).

At least two Washington cases have held, directly or indirectly, that “the proper court” in which a person having a claim against a decedent must bring suit is the superior court. In *McWhorter v. Bush*, 7 Wn. App. 831, 502 P.2d 1224 (1972), the executor of an estate appealed from the allowance of a claim that the executor contended had been pursued by improperly asserting an action in the existing probate rather than filing a separate civil action. The facts in *McWhorter* were more compelling than those in the present case—unlike the venue of an action, which can be wrong but is subject to waiver or correction, the procedure followed in *McWhorter* was unquestionably wrong under existing case law requiring the commencement of a separate civil action. 7 Wn. App. at 832 (citing *Rutter v. Rutter*, 59 Wn.2d 781, 784, 370 P.2d 862 (1962); *Schluneger v. Seattle First-Nat’l Bank*, 48 Wn.2d 188, 190, 292 P.2d 203 (1956)). Still, this court held

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that the superior court was “the proper court” and whatever mistakes had been made, the claim had been pursued in the superior court:

[Former] RCW 11.40.60 requires that suits upon rejected claims be brought “in the proper court” within 30 days of notice of rejection. The “proper court” in this instance is the superior court; this probate and the actions on the rejected claims were filed in the superior court. . . . Probate proceedings are properly within the jurisdiction of the superior court.

McWhorter, 7 Wn. App. at 832-22 (footnote omitted).

An earlier case, *Stell Co. v. Smith*, 16 Wn.2d 388, 398, 133 P.2d 811 (1943), recognized that filing suit against an estate in the wrong county was inconsequential. The Supreme Court was presented with an argument that a creditor’s action “should have been brought in superior court for Grant county, the probate forum, instead of being instituted in superior court for Chelan county.” *Id.* It rejected the argument, in part for the reason that “if the action was commenced in the wrong county, venue to Grant county could have been changed upon respondent’s motion therefor.” *Id.*

We hold that under the Washington Constitution and statutes, then, “the proper court” in which a person having a claim against a decedent is to bring suit is the superior court.

The estate argues that even if “the proper court” under the nonclaim statute is the superior court, “judicial admissions” estop Mr. Porter from arguing that jurisdiction was proper in Pierce County. Resp’t’s Br. at 30. It points specifically to the “Order Transferring Venue and Jurisdiction to Kittitas County,” and its finding that the “action

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[is] of a nature that requires change of venue and jurisdiction to Kittitas County.” Br. of Resp’t at 30. It relies on *Mukilteo Retirement Apartments v. Mukilteo Investors LP*, 176 Wn. App. 244, 256 n.8, 310 P.3d 814 (2013).

Mukilteo Retirement Apartments deals with judicial admissions that are made in a party’s answer, are never deleted by amendment, and are the basis on which a case is tried. It is clearly inapposite. More importantly, language in the Pierce County court’s order is not inconsistent with the position Mr. Porter was taking at the time. While it is now clear from the Supreme Court’s decision in *Ralph* that the Pierce County court was not transferring jurisdiction, the concept of transferring jurisdiction was consistent with Mr. Porter’s belief in 2013 that he was required by RCW 4.12.010(1) to file his post-rejection lawsuit in Pierce County as the only county with subject matter jurisdiction. Until abrogated by *Ralph*, Washington decisions had held that as long as an action involving title to real property was brought in the county in which the property was located, the superior court in that proper county could “confer” its jurisdiction over a properly commenced action upon transferring the action to another court. *Ralph*, 182 Wn.2d at 255 (citing cases).

Mr. Porter filed his post-rejection lawsuit in the proper court.

III. Conclusion and attorney fees

For the foregoing reasons, the trial court erred in treating Mr. Porter as having failed to timely bring suit under the nonclaim statute and in quieting title in the Pierce

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County properties in the Boisso estate. It necessarily erred in applying its judgment in the probate action as collateral estoppel and, on that basis, dismissing the claims of Mr. Porter that had been transferred to Kittitas County by the Pierce County Superior Court. The court's finding that the estate was the prevailing party in the probate proceeding for purposes of awarding attorney fees was an abuse of discretion.

Both parties request an award of attorney fees on appeal under RCW 11.96A.150. The estate additionally requests an award of fees under RAP 18.9, which authorizes us to require a party to pay the opposing party's reasonable attorney fees and costs if an appeal is frivolous. Needless to say, Mr. Porter's appeal was not frivolous.

RCW 11.96A.150 provides that we may, in our discretion

order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

Having considered the statutory factors, we decline to award attorney fees and costs on appeal to either party.

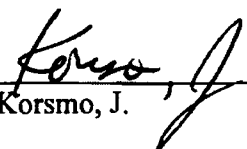
We vacate the final judgments in both actions; reverse the trial court's orders clearing title, dismissing Mr. Porter's complaint with prejudice, and awarding attorney

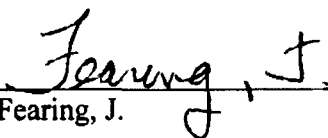
No. 31805-2-III; cons. w/ No. 31809-5-III
Porter v. Boisso

fees and costs to the estate; and remand for further proceedings consistent with this opinion.


Siddoway, C.J.

WE CONCUR:


Korsmo, J.


Fearing, J.

No. 31805-2-III (consolidated with No. 31809-5-III)
Porter v. Boisso
Appendix

APPENDIX

July 17, 01

hi Kevin

I found the copy of the title
finally—huh! I dated 7/26/01
Thanks for the payment last month!
I calculated what the monthly interest
will be on the mortgage for the remaining balance of
\$106,950 using
8.25% interest rate. Current rate
with good credit is around 7.25%
People I've talked to say owner
who holds the paper should ask
2-3% above bank rate, to
help cover the risk. I'm asking 8.25%
The yearly interest will be \$8819.00
monthly it will be \$734.33
so you'll need to pay \$734.33 interest
a month plus principal.
I've been taking all money
given to me off the principal / no interest.
I'd really like to see a
little more money monthly around the
20th-25th so it's more regular
and closer to the interest plus

No. 31805-2-III (consolidated with No. 31809-5-III)
Porter v. Boisso
Appendix

principal amount when we
do the paper work. I'll continue
to take total amount off principal
until we sign.

~~1-360-8~~ 1-509-933-1913

Charles

(BONNIVILLE)

Also the bonneville power co.
will be marking and cutting
dangerous trees on the front near
the lines 6/10/01
See ya soon —

CP (No. 318095) at 34-35.

APPENDIX B

FILED

12 DEC 17 AM 8:34

KITTITAS COUNTY
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITTITAS

In re: the Estate of:

Charles R. Boisso,

Deceased.

No. 12-4-00086-7

CREDITOR'S CLAIM
(RCW 11.40.070)

Claimant's Name: Kevin Porter

and Address: Post Office Box 105, Kapowsin, WA 98334

If Claim made by Claimant's Agent: Agent's Name: Bryce H. Dille

and Address: 317 South Meridian, Puyallup, WA 98371

Nature of Agent's Authority: Attorney at Law

Facts and circumstances surrounding the Claim: In August of 1999, Claimant entered into an agreement with the Decedent to purchase two one and one half acre parcels in Pierce County, Washington, known as tax parcel numbers 0418245006 and 0418245008, the legal description of which is as follows:

LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24 TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO PIERCE COUNTY ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES DC4726JG11/1/91BO

The purchase price was agreed upon to be \$120,000.00 and since August of 1999 until the date of death, the Claimant has paid \$116,900.00 to the Decedent; therefore, the balance owing is \$3,100.00 to complete the payment of the purchase price. Claimant requests that upon payment

Creditor's Claim - Page 1 of 2

I:\DATA\BHD\W\Porter, Kevin 16775.001\Creditor's Claim.rtf

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.

Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

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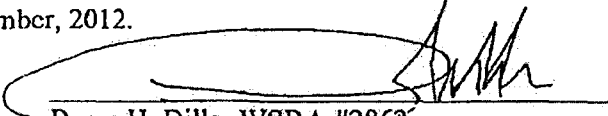
13

1 of the principal balance due, the estate execute a deed in and to the property described herein
2 conveying the property to the Claimant free and clear of all liens and encumbrances in
3 accordance with the agreement of the parties. The Claimant has resided upon and occupied the
4 property and has claimed it as his own since 1999 and has paid for all improvements with respect
5 to the property as well as reimbursed the Decedent for the real property taxes assessed against
6 the property. Therefore, Claimant claims an interest in and to said property as the purchaser and
7 requests a statutory warranty deed conveying title to the same to the Claimant upon payment of
8 the balance of the purchase price.

9 Amount of Claim: \$116,900.00

10 If Claim is secured, the nature of the security; if not yet due, the date when it will become due;
11 and if contingent, the nature of the uncertainty: Property described above is security. See
12 attached Notice of Claim of Interest.

13 DATED this 13 day of December, 2012.

14 
15 Bryce H. Dille, WSBA #2862
16 of Campbell, Dille, Barnett & Smith
17 Attorneys for Creditor

18 I acknowledge receipt of this Creditor's Claim on Date: _____

19 _____
20 Personal Representative

21 I allow this Creditor's Claim in the amount of \$ _____

22 I reject this Creditor's Claim.

23 Dated: _____

24 Signed: _____

Printed Name: _____

Personal Representative

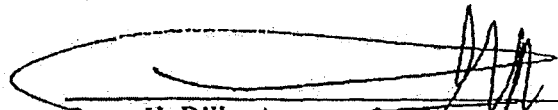
After Recording Return to:
Bryce H. Dille
Campbell, Dille, Barnett & Smith, PLLC
317 South Meridian
P.O. Box 488
Puyallup, WA 98371

NOTICE OF CLAIM OF INTEREST

Grantor: Kevin Porter
Grantee: Estate of Charles Boisso
Legal Description: LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24
TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO
PIERCE COUNTY ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF
1-036 SEG X0833PP ES DC4726JG11/1/91BO
Complete Legal Description is located on Page _____ of document
Assessor's Tax Parcel Number: 0418245006 and 0418245008

NOTICE IS HEREBY GIVEN that Kevin Porter hereby claims right, title and interest in and to the property described above as an ownership interest in said property pursuant to an unrecorded purchase agreement with the decedent. In accordance therewith, has filed a Creditor's Claim in the Estate of Charles Boisso, Kittitas County Superior Court, Cause No. 12-4-00086-7, a copy of which is attached hereto. The purpose of this claim is to provide notice to all parties that Kevin Porter claims right, title and interest in and to said property.

DATED this 13 day of December, 2012.

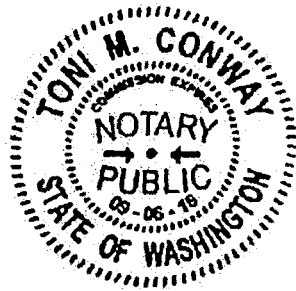

Bryce H. Dille, Attorney for Grantor


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STATE OF WASHINGTON)
) §
COUNTY OF PIERCE)

On this day personally appeared before me Bryce H. Dille, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 13 day of December, 2012.




Printed Name: Toni M. Conway
NOTARY PUBLIC in and for the State of
Washington, residing at Puyallup
My commission expires: 9/6/16

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APPENDIX C

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

Kevin Porter,

Plaintiff,

No. 13-2-05804-4

vs.

COMPLAINT FOR SPECIFIC
PERFORMANCE AND/OR
DECLARATORY JUDGMENT

Nathanial (Nate) Boisso, Personal
Representative of the Estate of Charles
Boisso,

Defendant.

COMES NOW the plaintiff, Kevin Porter, by and through his attorney, Bryce H. Dille of Campbell, Dille, Barnett & Smith, and for cause of action against the defendant, Nathanial (Nate) Boisso, Personal Representative of the Estate of Charles Boisso, states as follows:

1. Charles Boisso is deceased and probate proceedings concerning his estate have been instituted in the Superior Court for the County of Kittitas under Cause No. 12-4-00086-7 and the defendant, Nathanial (Nate) Boisso, has been appointed personal representative of the Estate of Charles Boisso.

2. Venue and jurisdiction of this action are proper in this Court.

1 3. The plaintiff filed a Creditor's Claim seeking enforcement of a contract to
2 purchase certain real property in Pierce County in said estate, a copy of which is attached hereto
3 and incorporated herein as Exhibit "A".
4

5 4. Said Creditor's Claim was rejected on or about December 31, 2012, a copy of said
6 Notice of Rejection of Creditor's Claim is attached hereto and incorporated herein as Exhibit
7 "B".

8 5. In August of 1999, the plaintiff and Charles Boisso entered into an agreement
9 under the terms of which the plaintiff would purchase from Charles Boisso two parcels of real
10 property in Pierce County, Washington, identified as Pierce County Tax Parcel Numbers
11 0418254006 and 0418245008, the legal descriptions of which are as follows:

12 LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24
13 TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT
14 PORTION DEEDED TO PIERCE COUNTY ETN 772700
15 TOG/W EASE & RESTRICTIONS OF REC OUT OF 1-036 SEG
16 X0833PP ES DC4726JG11/1/91BO

17 6. At that time, the plaintiff paid Charles Boisso \$2,000.00 by way of a down
18 payment on the property, and on August 2, 1999, the plaintiff paid Charles Boisso an additional
19 \$1,000.00 for the purchase of the property, and on November 26, 1999, an additional \$1,000.00
20 payment was paid to be applied against the purchase price.

21 7. On or about January 2, 2000, an additional \$1,200.00 was paid to be applied
22 against the purchase price, for total payments up to that date of \$4,200.00, which was to be
23 applied against the principal of the purchase price.

24 8. In July of 2001, the parties agreed that the balance owing was \$106,950.00, a
copy of a correspondence written by Charles Boisso to the plaintiff indicating the purchase price

1 is attached hereto and incorporated herein as Exhibit "C".

2
3 9. In accordance with the terms of the agreement, the parties agreed that the
4 continued payments to be made by the plaintiff would be deducted from the principal until a
5 formal purchase and sale agreement was signed. Said agreement was never signed.

6 10. The plaintiff has paid to Charles Boisso approximately \$116,900.00 which has
7 been applied against the purchase price of the property.

8 11. Based upon the foregoing allegations, the plaintiff is entitled to a declaratory
9 judgment confirming the terms and provisions of the contract under which the plaintiff was
10 purchasing the property from the Charles Boisso (and now, his estate) and to a court order
11 specifically enforcing that contract, including determining the balance due for the purchase of
12 said property and confirming the plaintiff's right to acquire the property.

13 12. Alternatively, the plaintiff is entitled to damages for unjust enrichment because he
14 has continually resided on the property from 1999 to the present date and has expended
15 thousands of dollars in maintaining and improving the property, all of which expenditures and
16 improvements were made with the full knowledge of Charles Boisso.

17
18 13. The plaintiff reasonably relied on the statements and conduct of Charles Boisso
19 and the continued assent of Charles Boisso in accepting payments and his full knowledge of the
20 improvements that the plaintiff was providing to the property that justice can only be provided
21 by specific performance.

22 **WHEREFORE**, the plaintiff prays that this court:

23 A. Enter a judgment specifically enforcing the terms of the purchase and sale
24 agreement under which the plaintiff has been purchasing the property, including a declaratory

1 judgment confirming the terms and provisions of said contract;

2 B. Enter a judgment establishing the plaintiff's right, title and interest in the property
3 and determine the nature and extent of said right, title and interest of the plaintiff;

4 C. Alternatively, enter a judgment for damages for unjust enrichment in an amount
5 to be fully proven at trial;

6 D. Enter a judgment that the defendant had no basis to reject the plaintiff's creditor
7 claim and that the claim should be allowed; and

8 E. For such other and further relief as the court deems just and equitable in the
9 premises, including recoverable attorney fees and costs of suit.

10 DATED this 29th day of January, 2013.

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14 Bryce H. Dille, WSBA #2862
15 of Campbell, Dille, Barnett & Smith
16 Attorneys for Plaintiff

EXHIBIT "A"

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FILED

DEC 17 2012

JOYCE L. JULSRUD, CLERK
KITITITAS COUNTY, WASHINGTON

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITITITAS

In re the Estate of:

Charles R. Boisso,

Deceased.

No. 12-4-00086-7

CREDITOR'S CLAIM
(RCW 11.40.070)

Claimant's Name: Kevin Porter

and Address: Post Office Box 105, Kapowsin, WA 98334

If Claim made by Claimant's Agent: Agent's Name: Bryce H. Dille

and Address: 317 South Meridian, Puyallup, WA 98371

Nature of Agent's Authority: Attorney at Law

Facts and circumstances surrounding the Claim: In August of 1999, Claimant entered into an agreement with the Decedent to purchase two one and one half acre parcels in Pierce County, Washington, known as tax parcel numbers 0418245006 and 0418245008, the legal description of which is as follows:

LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24 TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO PIERCE COUNTY ETN 772700 TOG/W EASE & RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES DC4726JG11/1/91B0

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Creditor's Claim - Page 1 of 2

I:\DATA\BHD\MPorter, Kevin 16775.001\Creditor's Claim.rtf

CAMPBELL, DILLE, BARNETT,
& SMITH, P.L.L.C.

Attorneys at Law
317 South Meridian
Puyallup, Washington 98371
253-848-3513
253-845-4941 facsimile

*Nathaniel
Dille*

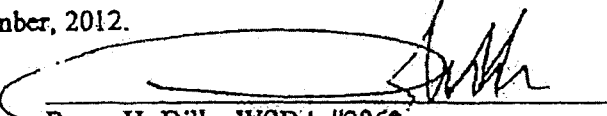
000027

1 of the principal balance due, the estate execute a deed in and to the property described herein
2 conveying the property to the Claimant free and clear of all liens and encumbrances in
3 accordance with the agreement of the parties. The Claimant has resided upon and occupied the
4 property and has claimed it as his own since 1999 and has paid for all improvements with respect
5 to the property as well as reimbursed the Decedent for the real property taxes assessed against
6 the property. Therefore, Claimant claims an interest in and to said property as the purchaser and
7 requests a statutory warranty deed conveying title to the same to the Claimant upon payment of
8 the balance of the purchase price.

9 Amount of Claim: \$116,900.00

10 If Claim is secured, the nature of the security; if not yet due, the date when it will become due;
11 and if contingent, the nature of the uncertainty: Property described above is security. See
12 attached Notice of Claim of Interest.

13 DATED this 13 day of December, 2012.

14 
15 Bryce H. Dille, WSBA #2862
16 of Campbell, Dille, Barnett & Smith
17 Attorneys for Creditor

18 I acknowledge receipt of this Creditor's Claim on Date: _____

19 _____
20 Personal Representative

21 I allow this Creditor's Claim in the amount of \$ _____

22 I reject this Creditor's Claim.

23 Dated: _____

24 Signed: _____

Printed Name: _____
Personal Representative

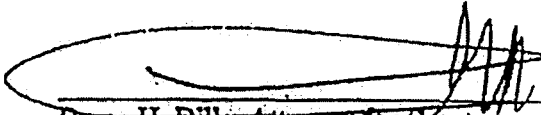
After Recording Return to:
Bryce H. Dille
Campbell, Dille, Barnett & Smith, PLLC
317 South Meridian
P.O. Box 488
Puyallup, WA 98371

NOTICE OF CLAIM OF INTEREST

Grantor: Kevin Porter
Grantee: Estate of Charles Boisso
Legal Description: LOTS 2 AND 4 OF SHORT PLAT 86-07-16-0314, SECTION 24 TOWNSHIP 18 RANGE 04 QUARTER 13: EXCEPT THAT PORTION DEEDED TO PIERCE COUNTY ETN 772700 TOG/W BASE & RESTRICTIONS OF REC OUT OF 1-036 SEG X0833PP ES DC4726JG11/1/91B0
Complete Legal Description is located on Page _____ of document
Assessor's Tax Parcel Number: 0418245006 and 0418245008

NOTICE IS HEREBY GIVEN that Kevin Porter hereby claims right, title and interest in and to the property described above as an ownership interest in said property pursuant to an unrecorded purchase agreement with the decedent. In accordance therewith, has filed a Creditor's Claim in the Estate of Charles Boisso, Kittitas County Superior Court, Cause No. 12-4-00086-7, a copy of which is attached hereto. The purpose of this claim is to provide notice to all parties that Kevin Porter claims right, title and interest in and to said property.

DATED this 13 day of December, 2012.

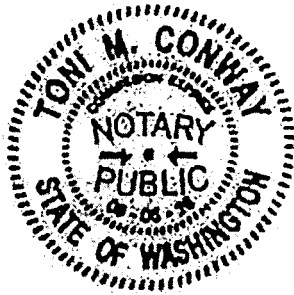

Bryce H. Dille, Attorney for Grantor

123,501
38,400

STATE OF WASHINGTON)
) §
COUNTY OF PIERCE)

On this day personally appeared before me Bryce H. Dille, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 13 day of December, 2012.





Printed Name: Toni M. Conway
NOTARY PUBLIC in and for the State of
Washington, residing at Puyallup
My commission expires: 9/6/16

EXHIBIT “B”

000031

FILED

DEC 31 2012

JOYCE L. JULSRUD, CLERK
KITITAS COUNTY, WASHINGTON

KITITAS COUNTY SUPERIOR COURT FOR THE STATE OF WASHINGTON

In Re the Estate of:

CHARLES BOISSO,

Decedent.

NO. 12-4-00086-7

NOTICE OF REJECTION OF
CREDITOR'S CLAIM

TO: Kevin Porter, through his Agent, Bryce H. Dille

PLEASE TAKE NOTICE that the claim in the amount of \$116,900.00 made against the above-named Estate by Kevin Porter through his Agent, Bryce H. Dille, 317 South Meridian, Puyallup, Washington 98371, is hereby rejected by the Personal Representative herein due to a dispute as to the validity of the claim and Claimant's status as a creditor. Pursuant to RCW 11.40.100, you must bring suit in the proper Court against the Personal Representative within thirty days after the date of the postmark of the mailing of this Notice, and that otherwise your claim will be forever barred.

DATED this 31st day of December, 2012.

JEFFREY D. WINTER, P.S.

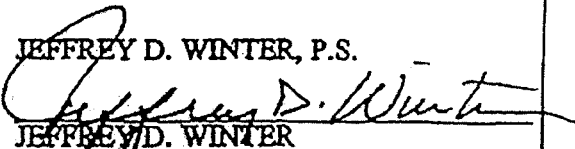

JEFFREY D. WINTER
Attorney for Personal Representative
WSBA# 20105

EXHIBIT “C”

000033

July 17, 01

hi. Keren

I found the copy of the title finally - but I dated 7/26/01

Thanks for the payment last month.

I calculated what the monthly interest will be on the mortgage for the remaining balance of \$106,950 using 8.25% interest rate. Current rate with good credit is around 7.25%. People who talk to pay owner who holds the paper should ask 2-3% above bank rate, to help cover the risk - I'm asking 8.25%.

The yearly interest will be \$8819.00
monthly it will be \$734.33
so you'll need to pay \$734.33 interest
a month plus principal.

I've been taking all money given to me off the principal / no interest.

I'd really like to see a little more money monthly around the 20th - 250000.34 its more regular

and closer to the interest plus
principal amount when we
do the paper work. I'll continue
to take total amount off principal
until we sign.

~~1-360-8~~ 1-509-933-1913

Charles

(Bainville)

Also the Bonneville power co.
will be marking and cutting
dangerous trees on the front near
the lines. 6/10/01

See ya soon -