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NO. 71544-5-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

BEL AIR & BRINEY, A General Partnership; NICK BRINEY, A Single Man; and ROGER BELAIR, A Married Man,

Appellants,

and

CITY OF KENT,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE ANDREA DARVAS

REPLY BRIEF OF APPELLANTS

THE HUNSINGER LAW FIRM
Attorney for Appellants BEL AIR & BRINEY; NICK BRINEY; AND ROGER BELAIR

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I. INTRODUCTION

Appellants Bel Air & Briney agree with the Respondent City of Kent's statement at page 17 of its Response Brief: "Thus, the analysis turns on whether there would be a windfall or material prejudice [as a result of the application of equitable subrogation]." For the reasons discussed in Bel Air & Briney's Principal Brief, awarding the City an equitable lien would result in material prejudice, and not a windfall, to Bel Air & Briney.

To make matters worse, the Trial Court's ruling after both appellate briefs were submitted greatly exacerbated the material prejudice suffered by Bel Air & Briney. After awarding to the City of Kent an equitable lien in first position, it allowed it to foreclose on that lien even though (1) it replaced a non-existent debt that had already been paid off; and (2) foreclosure will completely eliminate any chance Bel Air & Briney would have to recover any money from the loan it made to the property's owner, which would have been fully repaid from the City of Kent's purchase of the property but for the egregious error of its title insurer.

The Trial Court's award of the equitable lien should be reversed and, in the alternative, its order allowing that lien to be foreclosed by the City of Kent should be reversed.

II. ADDITIONAL ASSIGNMENT OF ERROR

1. The trial court erred in granting the Respondent City of Kent's Motion for Reconsideration and entering an Amended Judgment, ordering that the encumbered property be sold in a lien foreclosure proceeding and the proceeds therefrom (after costs of sale) be paid first to the City up to its $196,894.17 equitable lien.

III. UPDATED PROCEDURAL HISTORY

After the filing of the appellate briefs, the Trial Court granted the City's Motion for Reconsideration (CP 405-407), then entered an Amended Judgment (CP 408-412; Docket 76A), ordering that the City's lien be sold by the King County Sheriff "in the manner provided by law for foreclosures and in accordance with the practice of this Court", that the City "may credit-bid at such Sheriff's Sale up to a maximum of $196,894.17", that the first $196,894.17 from the proceeds from said sale after deducting costs of sale would be paid to the City, and that upon the completion of the Sheriff's Sale Bel Air & Briney's lien will be extinguished unless they purchase the property at the foreclosure sale. (CP 408-412) ("The Foreclosure Order").

IV. ARGUMENT

A. The Parties Agree that the Outcome of this Case Depends on Whether the Application of Equitable Subrogation Would Prevent a Windfall to, and Will Not Materially Prejudice, Bel Air & Briney.

At page 13 of its Response Brief, the City of Kent states, "In other words, the court determines whether application of the doctrine of equitable subrogation (1) prevents a windfall for the party objecting to the application of the doctrine, and (2) will not materially prejudice the party objecting to the application of the doctrine." Bel Air & Briney agree that is the issue before this Court.

B. The Award of the Equitable Lien Materially Prejudiced Bel Air & Briney and Was Thus Erroneous.

In its Principal Brief Bel Air & Briney explained in detail why, due to the unique circumstances of this case, the application of equitable subrogation would not result in a windfall to them. The two primary oppositional arguments in the Response Brief fail to rebut that contention.

1. This Case Is Dissimilar from Illustration 21 to the Restatement.

In its Response Brief at page 14 the City of Kent quotes verbatim from Illustration 21 to the Restatement (Third) of Property:

Mortgages ¶7.6 (1997), claiming it is "analogous to the facts of this case, namely where a purchaser pays off a seller's loan but fails to satisfy, or obtain a discharge of, a junior lien": in the course of purchasing property the buyer satisfies the first mortgage and takes title, relying upon the seller's false assurance that there is not a second mortgage that remains unpaid after the sale is completed. The buyer is entitled to subrogation to the first mortgage "in order to prevent unjust enrichment of the second mortgagee."

This Illustration is critically incomplete because it assumes the second mortgagee would otherwise be unjustly enriched without considering the real-life consequences to the junior lien holder (i.e., Bel Air & Briney) of the pocketing by the seller (Tran) of the sale proceeds that were supposed to have been disbursed to Bel Air & Briney. As Bel Air & Briney explain in their Principal Brief, Tran was current in his debt to them that was secured by their second deed of trust until the property was sold, after which he lost all incentive to continue making payments since his debt that encumbered his property became unsecured and he had received an extra $140,000 due to the title insurer's error. This jeopardized the likelihood that Tran would pay off his debt to Bel Air & Briney

far more than changing the maturity date of a secured loan from six to 30 years (with a substantial decrease in the interest rate), which the Supreme Court found to be materially prejudicial to the junior lien holder in *Kim v. Lee*, 145 Wash.2d 79, 88, 31 P.3d 665 (2001), denying the refinancing lender equitable subrogation as a result.

The Illustration also assumes that the buyer did not obtain title insurance when it purchased the property, and it did not grant the buyer the right to foreclose on its equitable lien, two factors that play a significant role in this case and will be discussed *infra*.

The same discrepancies -- and more -- apply to the 88-year old case the City of Kent states Illustration 21 was based on[1], *Dixon v. Morgan*, 154 Tenn. 389, 285 S.W. 558 (1927). In *Dixon*, the Tennessee Supreme Court concluded that "[i]f decreed the relief asked for, the position of the defendants [junior lien holders] will remain unchanged, and their security will be in no wise affected." *Id. at 563* That may have been true for those junior lien holders in *Dixon*, but it certainly was not the case for Bel Air & Briney.

2. Bel Air & Briney Did Not Receive a Windfall from the Payoff of the Senior Lien, in Part Because it Was Part of a Purchase.

The City of Kent is too clever for its own good when it states

[1] Response Brief, page 26

in its Response Brief at page 21 that Bel Air & Briney's "approach completely misses the point of equitable subrogation. It is not that Bel Air & Briney received a windfall from the *purchase* by the City of Kent, it is that it received a windfall from the *payoff of the senior lien."* (emphasis in the original) The latter would be true if the City of Kent acted merely as a refinancing lender; in fact, to support its claim the City of Kent quotes from *Columbia Community Bank v. Newman Park, LLC*, 177 Wn.2d 566, 575, 304 P.3d 472 (2013) (*Newman Park)* "in the ***refinancing*** context". (emphasis added)

As just explained, *supra*, a purchase where the seller gets the money that was supposed to go to the junior lien holder materially prejudices the latter's chances to get repaid, whereas a loan that merely replaces the prior senior loan with another has no consequences to the junior lien holder unless its terms are materially different, as occurred in *Kim.*

In the unique circumstances of this case -- the seller pocketing the money that was supposed to be used to satisfy the junior lien, the junior lien holder not knowing about the sale, and the value of the collateral plummeting -- the City of Kent's illustrative analogies and analyses simply do not support its claim that Bel Air & Briney would enjoy a windfall if equitable subrogation was not

awarded.

But even if it were appropriate to award the equitable relief, it cannot be credibly argued that allowing the City of Kent to foreclose on that lien will not materially prejudice Bel Air & Briney, in violation of even the most liberal application of Restatement §7.6.

C. The Foreclosure Order Was Erroneous, Even If The Equitable Lien Award Was Not.

1. There Is No Legal Authority Allowing the City of Kent to Foreclose Its Equitable Lien.

The City of Kent was allowed to "stand in the shoes" of Tran's first deed of trust in favor of MortgageIt, Inc., which secured a phantom debt that no longer existed, since it had been paid in full when the City of Kent purchased the property.

The City of Kent nevertheless sought to foreclose on that lien. In its proposed Judgment -- which was signed by the Trial Court without presentation and without prior notice to Bel Air & Briney -- the City called for "[t]he Property be sold by the Sheriff of King County, Washington, in the manner provided by law for foreclosures and in accordance with the practice of this Court", and proceeded to detail the process by which such "Sheriff's Sale" shall take place. (CP 287)

The Judgment failed to identify what "law of foreclosures" or

what "practice of this Court" authorized such a "Sheriff's Sale", and in its Response to Bel Air & Briney's Motion for Reconsideration of Judgment the City of Kent admitted that "the issue of how to foreclose an equitable lien arising under the doctrine of equitable subrogation has apparently not risen to the appellate level in Washington, . . ." (CP 304)

The City of Kent later acknowledged that although it was "standing in the shoes" of MortgageIt's deed of trust, it was not seeking to foreclose its equitable lien under the deed of trust foreclosure statutes, RCW 6.12 (judicially) or RCW 61.24 (non-judicially). (CP 305-306) It explained it would instead follow the procedures of RCW 6.21, which only apply to one who has obtained a judgment for money (CP 306), even though the City had never sought, let alone obtained, a monetary judgment and the Judgment it presented made no mention of a monetary judgment (CP 285-288).

In its Order Granting Defendants' Motion for Reconsideration of Judgment the Trial Court correctly held that "[t]here is no apparent legal authority for the City to foreclose on its equitable subrogation position, as the City was never a **lender** on the property, and there is no party in default with respect to the City. . .

Given the equitable subrogation is an equitable remedy, and that granting the City the right to 'foreclose' when it has only an 'equitable' mortgage, rather than a true security interest, would not be equitable to the defendants." (CP 347) (emphasis in the original)

During the oral argument on the City of Kent's subsequent Motion for Reconsideration, its counsel contended for the first time that *Olson v. Chapman*, 4 Wn.2d 522, 104 P.2d 344 (1940) authorized the foreclosure of an equitable lien. The Trial Court agreed with the City of Kent when it granted its Motion for Reconsideration, stating that "the Supreme Court and the Court of Appeals at least tacitly referenced that a party which was equitably subrogated to a senior lienholder position was empowered to foreclose on that lien. Bel Air & Briney's attempt to distinguish these cases is not persuasive." (CP 406) That conclusion was erroneous as a matter law, because *Olson* was inapplicable to the facts and law of the instant case:

***Olson* involved state property tax statutes, which provide a basis for foreclosure that equitable subrogation does not.** The right of a payor of someone else's real property taxes to be reimbursed via an equitable lien has a unique and

distinct legal history in the state of Washington. In *Olson* at page 537 the Supreme Court cited *Burgert v. Carolina*, 31 Wash. 62, 71 P. 74 (1903) and *Stone v. Marshall*, 52 Wash. 375 (1909) in support of its award of an equitable lien to the plaintiff for reimbursement for property taxes.

In *Burgert*, eight children became the owners of real property as tenants in common. Their mother paid the delinquent property taxes and later asserted she had a lien against that property. The Supreme Court cited a statute that granted a lien to any person who had an interest in real property to recover real property taxes she paid on behalf of another, and case law applying that statute, to conclude that

> . . . it is the policy of the law to encourage the payment of taxes. The government, in order to exist, must not only levy a tax at stated intervals on all the property within its jurisdiction, but must insist that the tax levied be paid within a reasonable time. . . [The law] will, whenever the interests of justice require it, allow those who have an interest or a bona fide claim of interest in the property of another, and who have paid taxes thereon which rightfully should have been paid by that other, a lien against the land for the amount of taxes paid. *Id.* at 65-66

In *Stone*, the Supreme Court granted an equitable lien to the owner of a one-half interest in real property against the one-half

interest owned by his co-tenant for paying the latter's share of the property taxes, citing *Burgert*.

Olson and property taxes also played a significant role in the most recent equitable subrogation case, *Worden v. Smith*, 48 Wn. App. 309, 314 P.3d 1125 (2013), which granted that relief to a junior lien holder's assignee who asserted that another claimant should not receive a windfall because real property taxes had been erroneously paid by another. In rejecting the claimant's argument that it should not be responsible for the property taxes because they were a personal debt of the property owner, the Court held that "[s]ince the liability for property taxes is in rem rather than personal we conclude that here, too, the appropriate remedy is to impose an equitable lien on the property as was done in *Olson*, in which the appellants were 'subrogated to the rights of the county and state.'" *Id.* at 1136

Equitable subrogation allows the claimant to "step in the shoes" of another. In *Olson*, the plaintiff was granted the right to "step in the shoes" of the taxing authorities, who have the right to obtain a lien for unpaid real property taxes and foreclose on that lien. *Olson* applies only to equitable liens awarded to a specific subset of subrogees: those who paid property taxes that were

supposed to be paid by someone else. Property taxes have nothing to do with this case.

***Olson* involved one person being owed money by another; this case does not.** Olson sought a personal judgment against Stone, who owed Olson money. Neither Bel Air & Briney, Tran, nor anyone else who had an interest in the property ever owed the City of Kent any money. Not surprisingly, the City of Kent's proposed Judgment did not contain a monetary judgment or award.

In the Amended Judgment, this Court ordered the property to be sold "in the manner provided by law for foreclosures and in accordance with the practice of this Court . . ." (Docket 76A; CP 408-412) There is an extensive body of statutory and common law, and court rules, establishing how a judgment creditor can attempt to collect its money from the judgment debtor. However, there is no "law for foreclosures and in accordance with the practice of this Court" allowing foreclosure of a lien to eradicate a junior lien holder who never owed the foreclosing lien holder a dime.

***Olson* involved a lien against another person's interest in real property; this case involves a lien against its own interest in real property.** *Olson* and every other case in the state

of Washington allowing equitable subrogation granted a lien against an interest in real property held by someone else. Neither *Olson* nor any other case supports an equitable lien holder's right to foreclose on its own property, especially when no junior lien holder will receive a windfall if foreclosure is not allowed to occur.

The Trial Court was correct when it stated in its Order granting the City of Kent's Motion for Reconsideration that *Olson* and *Worden* merely "tacitly referenced" the right to foreclose an equitable lien: each comment constituted a few words within one sentence without any discussion. This is a woefully insufficient foundation upon which to create a principle for which there is not a single published authority anywhere in the United States, especially where it can be easily distinguished from the facts of the instant case.

2. Allowing the City of Kent to Foreclose on its Equitable Lien Materially Prejudiced Bel Air & Briney.

The parties agree on what would occur as a result of the Trial Court's granting the City of Kent's Motion for Reconsideration (allowing it to foreclose) or denying it (allowing Bel Air & Briney to foreclose):

If the City of Kent foreclosed on its lien:

- The City of Kent would "credit bid" its $197,000 lien (i.e., bid the amount of its lien in lieu of paying cash) and receive title to the property free and clear of all liens unless someone paid more, in cash, at the auction. The latter is highly unlikely, since the City of Kent contends the property is worth only $110,000.

- Bel Air & Briney's second deed of trust would be extinguished, causing it to lose its only chance to recover a small portion of its loss, which was caused solely by the mistake of City of Kent's title insurer, which will avoid any responsibility for causing the dispute.

If Bel Air & Briney instead foreclosed on their lien:

- Bel Air & Briney would credit bid their $134,000 (plus interest) deed of trust and very probably take title to the property.

- However, their ownership of the property will be subject to the City of Kent's $197,000 equitable senior lien. Bel Air & Briney would only be able to recover any money if a bidder at the auction or a subsequent buyer would be willing to purchase the property subject to the City of Kent's lien, which would be highly unlikely, or someone later paid more than $197,000 for the property, in which case the City of Kent would recover its $197,000 and Bel Air & Briney would get the meager remainder. (CP 388)

In its Order Granting Plaintiff's Motion for Reconsideration, the Trial Court held that:

> The City argues that foreclosure by Bel Air & Briney would inevitably result in the City losing the one asset it still has -- title to the property -- and would render the City's equitable subrogation interest as the senior lienholder meaningless in a practical sense, since the City would have no legal means to enforce its senior lien. . . The court is persuaded that without the remedy of foreclosure, the City's equitable mortgage is essentially worthless. The court recognizes that the decline in the property's value will have a harsh result on Bel Air & Briney if the City is permitted to foreclose. However, the converse is also true. (CP 406)

This ruling is erroneous as a matter of law for two reasons:

The City of Kent's Equitable Lien Would Not Be Worthless. The purchaser at the foreclosure sale will take title to the property via trustee's deed, and the Bel Air & Briney deed of trust will be extinguished. The City of Kent's right to be paid $197,000 will continue to be secured by the only lien against the property, meaning that when the property is later sold by whoever purchases it at the foreclosure sale, the first $197,000 in sales proceeds will be paid to the City of Kent. If the property is now worth $197,000 -- the $110,000 value is based on an appraisal obtained by the City of Kent in October 2012, 22 months ago -- its

lien is already fully collateralized. The City of Kent's lien will continue to encumber the property until it is paid in full, or the City chooses to release it in return for less than full payment. (CP 376)

Bel Air & Briney Would Be Materially Prejudiced. The Foreclosure Order completely ignores the analysis that even the City agrees (in page 17 of its Response Brief, *supra* at page 1) that the Trial Court was obligated to undertake: "Thus, the analysis turns on whether there would be a windfall or material prejudice [as a result of the application of equitable subrogation]."

The City of Kent had to concede that is the law because the Washington Supreme Court mandated it in *Bank of America v. Prestance Corp.,* 160 Wn.2d 560, 160 P.3d 17 (2007): "Equitable subrogation ***should never be allowed*** if a junior interest is materially prejudiced, but if the junior interests are unaffected, then there is no reason to deny it." *Id.*, page 572 "Equitable doctrine is a broad doctrine and should be followed whenever justice demands it ***and where there is no material prejudice to junior interest.***" *Id., page 581* (emphasis added in both)

There are, of course, risks associated with securing a debt with a junior lien, typically resulting in the debtor paying a higher interest rate and/or being subject to more stringent terms than

those involved with the senior debt. One, and perhaps the greatest, risk to a junior lien holder is that the owner of the real property might default on the senior debt, which would allow that lien holder to foreclose by having a public sale of the property conducted, with all the sales proceeds to first be applied to the entire debt owed to that lien holder and costs of the sale. The second lien holder would only get the remainder, if anything, and its deed of trust would be wiped out.

If, on the other hand, the property owner remains current in his payments on the senior deed of trust the sale of the property cannot be compelled by that lien holder, and even if the owner defaults on the second deed of trust, its beneficiary retains its deed of trust secured by property that its owner clearly wants to keep by not defaulting on the (typically much larger) obligation to the senior lien holder.

The risk to a junior lien holder if the senior lien holder could foreclose on its lien even if the debtor were not in default would be immeasurably greater than if – as is the law – the senior deed of trust could only be foreclosed if a default occurred. In fact, few if any loans would be made by junior lenders under those circumstances. But that is what the Amended Judgment now

allows.

On the day before the property was sold Bel Air & Briney's deed of trust was in second position, junior to a first deed of trust securing a debt of approximately $197,000 upon which Tran was, as far as is known, not in default. There was therefore no risk to Bel Air & Briney that the first deed of trust would be foreclosed upon. On the day after the sale and even after the Trial Court granted the City of Kent its equitable lien, Bel Air & Briney's deed of trust was still in second position, junior to a $197,000 lien that is still not in default.

In its Order Denying Defendants' Motion for Reconsideration the Trial Court held that "BAB was not prejudiced by the City's purchase of the property, since BAB's security interest remained precisely the same as it would have been if the City had not purchased the property." (CP 283) In its Response Brief at page 23, the City of Kent repeats that statement: "[r]einstating the senior lien through subrogation will simply leave Bel Air & Briney in precisely the same position it held at the closing of the City of Kent's purchase of the property when the City of Kent paid off MortgageIt's mortgage."

Both statements are patently incorrect because the

Amended Judgment allows the City to "foreclose" on its equitable lien and wipe out Bel Air & Briney's second deed of trust, whereas MortgageIt was not allowed to foreclose on its deed of trust, because Tran had not defaulted.

Allowing the City of Kent to foreclose on its equitable lien, which will require anyone who wants to purchase the property (which is worth $110,000) to pay at least $197,000 in cash at the sale, deprives Bel Air & Briney of its right to foreclose on its deed of trust that is actually in default, bid in the full amount of its debt, take title to the property (subject to the City of Kent's $197,000 equitable lien), and hope that some day it will be worth enough to sell and enable it to recover at least a few dollars from its catastrophic loss, caused solely and totally by the City's title insurer.

3. The Appropriate, In Fact Only, Equitable Remedy if the Equitable Lien is Allowed to Stand, is to Permit Bel Air & Briney to Foreclose on Their Deed of Trust and if the City of Kent is Damaged Accordingly, To Be Compensated for Its Loss By Its Title Insurer.

The Trial Court was presented with the perfect opportunity to craft an equitable solution to this dispute when ruling on the parties' Motions for Summary Judgment: deny the award of equitable subrogation, allow Bel Air & Briney to foreclose on their deed of trust, and leave it up to the City of Kent to be compensated for its

losses from its title insurer. It chose not to do so, because it "was unaware of any authority for the proposition that this is a proper factor on which the court should deny application of the doctrine of equitable subrogation." (CP 225)

This statement is true only because every equitable subrogation case in which the issue of title insurance has been determined to be inapplicable has involved what the court concluded was a windfall to the junior lien holder. Bel Air & Briney agree that where a title insurer's error created the problem that generated the potential need for equitable subrogation, the appropriate remedy is for equitable subrogation -- not compensation from the title insurer -- to be granted where it would prevent the unjust enrichment of the junior lien holder.

This case, however, involves facts not found in any published authority involving equitable subrogation anywhere in the state of Washington, not in any of the states cited by the City of Kent in pages 22-23, 26-28, and 34 of its Response Brief, and not in any other state: except Virginia. In both *Centreville Car Care, Inc. v. North American Mortgage Co.*, 262 Va. 339, 559 S.E. 2d 870 (2002) and *William B. Gregory et al. v. Revenue Service*, 2012 WL 5426533 (W.D. Va.), discussed in Bel Air & Briney's Principal Brief

at pages 25-31, the appellate courts denied equitable subrogation because junior lien holders were damaged as a result of errors caused by the title insurers.

The City of Kent's attempt to distinguish the Virginia cases in pages 28-30 of its Response Brief is based on two contentions: that Virginia does not liberally apply Restatement Third §7.6, and a liberal application of that section would have resulted in an award of equitable subrogation.

But those arguments ignore the same thing that the Trial Court disregarded here: even in the state of Washington, "equitable subrogation should never be allowed if a junior interest is materially prejudiced". *Prestance* at 572

The City of Kent's arguments in favor of disregarding title insurance here can be easily dismissed.

The City of Kent is (immaterially) correct: its title insurer was not negligent and has no duty to Bel Air & Briney. It made a terrible mistake for which it has no liability to Bel Air & Briney. Since the title insurer's duty arises out of a title insurance policy issued to the City, its failure to disclose Bel Air & Briney's second deed of trust in its policy was a breach of that contract with the City, not a negligent breach of a duty it owed to

Bel Air & Briney. The latter explains why Bel Air & Briney have not sued the title insurer: the former demonstrates how equity can be served by allowing the City of Kent to be compensated for its losses by its insurer.

The law regarding preliminary title commitments has nothing to do with this case. The City of Kent explains that inaccurate preliminary commitments issued by title insurers do not necessarily subject them to legal liability. That is a *non sequitur* here, because it was the title insurer's failure to disclose Bel Air & Briney's deed of trust in the title insurance policy, not the preliminary commitment, that makes it liable to its insured.

There is no evidence that a liberal application of equitable subrogation has saved, or might save, or will save, any consumer any money. In its Response Brief at page 35 the City of Kent claims that "[t]he liberal approach to equitable subrogation adopted by the Restatement saves homeowners moneys in title insurance premiums" without a single shred of evidence corroborating that statement.

It is true that in *Prestance* at 581 the Supreme Court made such a statement but (a) its sole source for the statement was a 2006 Brigham Young University Law Review article that has

nothing to do with this case (*see* Appellant's Principal Brief, pp. 37-39) and (b) it later admitted in *Newman Park* at 581 that such a view may have been "overstated".

Even if That Were True, Denying Equitable Subrogation In This Case Would Not Increase Costs to Anyone Because of its Unique Facts. As stated in this Brief earlier, the existence of title insurance should only be relevant in an equitable subrogation case if a junior lien holder would not be materially prejudiced by its application, an extremely rare occurrence. In fact, with the exception of the Virginia cases, the only published authority in the United States making such a ruling is in the state of Washington, is *Kim, supra,* at 145 Wn. 2d 79.

V. SUMMARY

This seemingly complicated case is actually quite simple: the parties stipulated to all of the material facts and agree on the fundamental principle of law: Bel Air & Briney wins unless awarding an equitable lien to the City of Kent **and allowing its foreclosure** does not materially prejudice Bel Air & Briney.

Even if -- as Bel Air & Briney adamantly disputes -- the equitable lien is appropriate, there is no windfall to Bel Air & Briney by allowing it to foreclose on its junior deed of trust because the

property is worth far less than the $197,000 lien awarded to the City of Kent. Allowing the City to foreclose that lien materially prejudices Bel Air & Briney by destroying what little chance it already had to recover any money. Finally, there is a simple way to provide equitable relief to both innocent victims of the title insurer's error: deny the City its equitable lien, or at least prohibit its right to foreclose on it, enabling the City to receive full compensation for any resultant damages from its title insurer, who created this fiasco in the first place.

DATED this 14th day of August, 2014.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 14, 2014, I arranged for service on or before August 15, 2014 of the foregoing Reply Brief of Appellants to the Court and to opposing counsel to this action as follows:

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DATED this 14th day of August, 2014, at Seattle, Washington.

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