NO. 73457-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

VAN NHU HUYNH,

Respondent,

vs.

LEUNG HING LI,

Appellant.

BRIEF OF RESPONDENT

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1. Where Appellant Leung Hing Li's own testimony clearly and conclusively proved the elements of adverse possession, did the trial court properly grant summary judgment in favor of Respondent Van Nhu Huynh (hereinafter "Van")?

2. Where Li sought continuance under CR 56(f) only after the trial court's summary judgment decision, did not explain why the desired evidence could not be obtained earlier during the years this case had been pending (since 2012), and did not specify any desired evidence that would raise an issue of material fact, did the trial court properly exercise its discretion in denying Li's CR 56(f) motion for continuance?

II. STATEMENT OF FACTS

This quiet title action involves only three properties (the "Subject Properties") located in King County, Washington. CP 5. They are 1725 Victoria Avenue SW, Seattle, WA (the “Victoria Property”); 2367 13th Avenue, Seattle, WA (the “13th Avenue Property”); and 4431 Letitia Avenue S., Seattle, WA (the “Letitia Property”). CP 6. The titles to the "Subject Properties" currently still have Li and Van as "husband and wife" on them, even though the parties were divorced in 1987, and divided up the assets and moved on with their separate lives and businesses since at least the 1990s. CP 6, 1-4, 168. Li wants to take what belongs to Van.

Van and Li were married in Washington on September 12, 1980, and lived at the Letitia Property, which Li acquired as a single person just before marriage in 1979. CP 7. They had two daughters, Grace and Jane. In 1983, the parties started a produce business, Asia Discount Center, which sold and delivered produce to local markets and restaurants, but the business did not do well. CP 7, 1-2, 169. In 1986, the parties put most of their money and energy into and started a furniture importing business, United Imports. CP 7, 2, 168, 169.

In 1987, Li hired an attorney named Michael Leong to represent him and filed a petition to divorce Van, in which Li swore under oath to no real estate ownership. CP 7, 20-21. Van was not represented in the divorce proceeding. CP 7.

Li traveled a lot for the furniture business and to look for and be with other women in China in the 1980s and 1990s. CP 7, 2, 168. After the divorce in 1987, Van had two young children to raise and hoped they would have a father. CP 7, 2. Hoping for reconciliation, Van let Li stay at her home in a separate room whenever Li wanted or was not traveling. CP 7, 2, 167. Unfortunately, Li did not appreciate Van's kindness to him and treated Van's home like a free hotel with free food. CP 7, 2, 167. Even after the divorce, due to the same hope of reconciliation, Van took title to the Subject Properties together with Li at his request by signing the forms

Li had the banks or other people prepare for Van, even though Van put up the purchase money for the 13th Avenue Property and Victoria Property, and was put on the loan for the Letitia Property. CP 7-8, 2.

Since at least 1990, Li and Van agreed that Li would own and run United Imports with his siblings (and they did), and Van would own and run Asia Discount Center with hers (and they did). CP 8, 2, 168, 169, 170. With her sister's help and sometimes Li's own help, Van removed Li's name from all the licenses and government papers for Asia Discount Center around 1990 or 1991. CP 8, 2. Since then, Van has not claimed any ownership interest in United Imports. CP 8, 2.

In 1993, after Li brought back a live-in girlfriend to Van's home, Van hired a Chinese lawyer, Sue Chang, who tried unsuccessfully to get Li to sign papers to officially clear his name from all assets he had previously agreed belonged to Van, including Asia Discount Center and the Subject Properties. CP 8, 2. Li did not oppose doing so, but simply did not respond to the requests to sign papers. CP 8, 2. As a result, at her lawyer's advice, Van founded and incorporated Asia Discount Center, Inc., a Washington corporation, in 1993. CP 8, 2, 170. Li has never been a shareholder, officer or director of the corporation, nor has he ever worked for or had anything to do with the corporation. CP 8, 2-3, 170. The parties moved on with their separate businesses since then. CP 8, 2-3, 168.

In 1997, any hope of reconciliation was dashed when Li brought to the United States a new wife from China whom he had officially married. CP 8, 3. Ever since then, Van has refused to let Mr. Li stay at her home any longer and has not allowed him to access the Subject Properties. CP 8, 3. Mr. Li and his new family moved out of Washington State for good soon after. CP 8, 3.

Since at least 1998 (and actually many years before that), Van has been the only person who paid the taxes, assessments, mortgages, insurances, improvements, expenses, upkeep, etc. for the Subject Properties. CP 8-9, 3. Since at least 1998, Van has had sole possession of said real estate and has treated said real estate as her own to the exclusion of all others, including making numerous improvements to each property and reporting said real estate on her income tax returns. CP 9, 3.

Li's own testimony corroborated Van's and third-party witnesses' testimonies on the issues material to adverse possession and show Li knew Van's taking control and sole ownership of the Subject Properties to his exclusion since 1998.

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Q. How do you feel about the fact that Van Huynh has taken control of these three properties?
A. What do you mean? I don't understand.
Q. Are you pleased by it?
A. She controls all of my money, assets, and property, and she wouldn't let me put my hand on it. This is not --

THE INTERPRETER: The interpreter needs to ask for clarification.
(Interpreter and witness converse.)
A. This is not normal.
Q. Do you feel like she's taken these properties from you?

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A. She is that type of person.
Q. Did she have your permission to take the properties?
A. No.

See CP 9, 31-32 (Li's Deposition, pp.73:14-74:3).[1]

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Q. So the last time that you did anything to obtain any of the money or assets or properties that you claim you are owed was in 2000; is that correct?
A. She should have given all these things back to me a long time ago, but she wouldn't. And as soon as I bring it up, she just would ignore me completely.
MR. DAVIES: Would you read my question back, please.
(Reporter read back as requested.)
A. Yes, about right. And in 2012 I came again. First, I wanted to talk to her about this matter. And she said, "Don't talk about this with me. Talk to my attorney."
Q. That was in 2012?
A. Yes.
Q. That was after you were served with the complaint in this lawsuit?

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A. Yes.
Q. And then the only other previous conversation you had with respect to retrieving your money, property, assets was the 2000 telephone call?
A. We did talk about it before. But as soon as we started talking about money, she would just hang up. Or sometimes she would avoid my phone calls. When she sees that it's my number, she would just ignore it and pick up

[1] The numbers immediately following a colon in CP and RP herein refer to line numbers.

9 the phone.

See CP 151-152, 162-163 (Li's deposition, pp.58:10-59:9).

Li's explanation for his inaction was inability to find an attorney.

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4 Q. What did you do?
5 A. Every time when I called her, as soon as we talked,
6 start talking about money, she would hang up right away.
7 Q. Did you send a letter?
8 A. I didn't send her letters; just making phone calls.
9 Q. Well, this is going on for 16 years. You haven't
10 been paid your money, and you haven't done anything other
11 than make a few phone calls?
12 A. I used to hire one attorney in Seattle. His name is
13 Jiaxian Li, and now I couldn't find him.

. . .

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2 Q. Okay. So you made phone calls. You didn't write
3 any letters; you didn't hire a lawyer. And you never got
4 any money for Asia Discount Center from 1998 on; is that
5 your testimony?
6 A. I did try to find an attorney, but I couldn't find
7 one.

See CP 152, 160-161 (Li's deposition, pp.53:4-13, 54:2-7).

According to Li, 1997 was the last year for which Van provided him with income/expense information for the Subject Properties so that Li could report the same on his income tax returns. See CP 47:23-28, 143.

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2 Q. Have you ever identified the fact that you owned
3 three pieces of property in Seattle, Washington on any tax
4 return since 1998?
5 A. No, because she was the one that filed those returns
6 for me.
7 Q. No. I said since 1998.

8 A. No, I didn't.

See CP 14, 152, 29 (Li's Deposition, p.66:2-8).

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4 Q. Can you tell me the last year you filed a federal
5 tax return?
6 A. You mean my personal or the company federal tax
7 return?
8 Q. An individual federal tax return.
9 A. 1040?
10 Q. Yes.
11 A. Every year. I did it also last year. I did it
12 every year.
13 Q. And you do it with the assistance of an accountant?
14 A. Yes.

See CP 14-15, 34 (Li's Deposition, p.99:4-14).

Li testified to being absent from and never entering Washington from 1998 to 2012. CP 12:4-13:18, CP 24-26, 30, 33 (Li's Deposition, pp.40:2-42:9, 71:15-17, 75:19-25). Therefore, there has been no issue with respect to Van's uninterrupted and exclusive possession of the Subject Properties since 1998.

III. SUMMARY OF THE PROCEEDINGS BELOW

Van initiated this quiet title action in August of 2012 and filed it with the trial court on September 11, 2012. The trial date was continued three times, once each year in 2013, 2014 and 2015 respectively. CP 209. It has been over three years now since the start of this case.

Van originally filed the motion for summary judgment at issue on

September 12, 2014, based on the same adverse possession/statute of limitation grounds as in the amended motion for summary judgment the trial court heard and decided in Van's favor on February 27, 2015.

Li and his counsel wanted to get the motion for summary judgment heard and decided back in October 2014 as originally scheduled without the need for any additional discovery because the parties and their respective attorneys all knew and agreed that the motion for summary judgment should be decided first before tremendous amounts of time and resources should be spent to pursue discovery of information, documents and witnesses going back well over 20 to nearly 30 years. CP 209. The only reason the motion was not heard and decided as originally scheduled last year was an emergency scheduling conflict. CP 209.

After the summary judgment motion was rescheduled to February 27, 2015, Li through his counsel chose to proceed with the hearing and did not request any continuance and did not file any affidavit or comply with the other CR 56(f) requirements. It was only after the trial court had already granted the summary judgment motion that Li sought a continuance under CR 56(f). After the trial court had announced the decision and signed the order granting summary judgment in court, Li's counsel said, "so it is too late to ask for a continuance of the hearing, your

honor?" RP 26:9-10.[2]

Li filed a motion for reconsideration repeating the same authorities and arguments presented in the summary judgment motion and included a CR 56(f) motion for continuance without explaining why the desired evidence could not be obtained earlier and without specifying any desired evidence that would raise an issue of material fact. CP 183-192. The trial court denied Li's motion for reconsideration. CP 226. The trial court also found Li's motion for continuance was untimely, and even if timely made, would not have satisfied the requirements of CR 56(f). CP 226.

IV. SUMMARY OF ARGUMENT

The trial court correctly applied the controlling adverse possession standards in *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984) and *Nicholas v. Cousins*, 1 Wn. App. 133, 459 P.2d 970 (1969) to Li's own testimony and evidence to resolve the parties' disputes as a matter of law. Citing no alternative standards, Li insisted the over-100-year-old *Graves v. Graves*, 48 Wash. 664, 94 P. 481 (1908) and *Hicks v. Hicks*, 69 Wash. 627, 125 P. 945 (1912) were "factually similar" and therefore controlling, even though both cases lack any outward act of exclusive ownership by

[2] The RP citations in this brief refer to the corrected Verbatim Transcript of Proceedings filed with this Court on or about 11/24/2015, not the previous version which contains multiple errors.

the adverse claimants.

Contrary to Li's assertions, the trial court did not rely on disputed facts, but on Li's own specific testimony/evidence about Van's excluding him from ownership and shutting him out in every way after 1998. Li's conclusory statements about his subjective belief are unreasonable under the circumstances and insufficient to raise a question of fact for summary judgment purposes. Moreover, Li's alleged factual disputes are irrelevant to any dispositive issue and do not raise any issue of material fact.

As to Li's "express trust" argument to toll the statute of limitation, the almost 3-decade-old, never-before-used power of attorney signed by Li alone while the parties were still married does not constitute any "express trust" under the law. Li's argument is also belied by Li's own testimony that he had no agreement with Van to manage his finances. Even assuming an express trust arguendo, Li's claim would have been barred by the 3-year statute of limitation many years ago.

Lastly, Li's motion for continuance was made after the trial court's summary judgment ruling and therefore untimely. It also failed to satisfy the CR 56(f) requirements and failed to specify evidence sought that would meet any dispositive issue or create any material issue of fact. The trial court properly exercised its discretion in denying Li's untimely motion for continuance.

V. ARGUMENT

A. The trial court correctly applied the controlling standards stated in *Chaplin* and *Nicholas* for adverse possession.

Of the adverse possession elements, Li disputed only the "hostile" element in the trial court, but did not define this element and did not set forth any standard of analysis or any material fact. See CP 46:1-49:4 (Sec. B of Li's arguments opposing summary judgment).[3]

Our Supreme Court thoroughly reexamined the "hostility/claim of right" element to clarify prior confusion in the case law, and concluded that it "requires only that the claimant treat the land as his own as against the world throughout the statutory period." *Chaplin v. Sanders*, 100 Wn.2d 853, 860-61, 676 P.2d 431 (1984). The nature of one's possession will be determined solely on the basis of the manner in which one treats the property. *Id.* at 861. The new *Chaplin* standard applies to all adverse possession cases.

Although stronger evidence is required to show adverse possession by a tenant in common than by a stranger, the evidence need not differ in kind. *Nicholas v. Cousins*, 1 Wn. App. 133, 137, 459 P.2d 970 (1969). "Actual verbal or written notice is not required." *Id.* What is required is

[3] Li also argued in the trial court that Van's complaint was deficient and he did not get fair notice (CP 44-45). Van responded to the argument with the applicable authority and

"exclusive ownership" . . . "of such a nature as to preclude the idea of a joint ownership brought home to the cotenant, or so open and public a character that a reasonable man would discover it." *Id*.

In the case at bar, Li's own testimony clearly and conclusively shows Van treated the Subject Properties as her own as against him and the world for well over the statutory period under RCW 4.16.020. See the Statement of Fact section above with citations to CP. Even according to Li, Van's actions clearly excluded him from ownership since 1998, and precluded the idea of a joint ownership in any reasonable person's mind after 1998. There is no issue of material fact under the standards set forth in *Chaplin* and *Nicholas*.

Li argues *Chaplin* and *Nicholas* are inapplicable by pointing out some irrelevant factual differences between the two cases and the case at bar. App. Br. at 15. However, the standards in *Chaplin* and *Nicholas* are for general application, are not limited to the facts of those cases, and are not affected in any way by those factual differences. See *Chaplin*, 100 Wn.2d at 859 ("new approach to the requirement of hostility") and 861, n.2 (overruling a litany of prior cases and other unspecified cases to the extent inconsistent with the *Chaplin* standard); *Nicholas*, 1 Wn. App. at

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showed why Li's argument was untenable and meritless (CP 141-42). Li has not made this argument on appeal and appears to have abandoned the argument.

138 (describing the rule stated above as the general rule in Washington for the situation where both cotenants are aware of cotenancy).

Li proffered no alternative standard for analysis and relied instead on over-100-year-old *Graves v. Graves*, 48 Wash. 664, 94 P. 481 (1908) and *Hicks v. Hicks*, 69 Wash. 627, 125 P. 945 (1912) as factually similar, but both *Graves* and *Hicks* lack outward act of exclusive ownership by the adverse claimants that would put the non-possessing cotenants on notice. Both *Graves* and *Hicks* also predated the 16th Amendment to the Constitution of the United States and the existence of federal income tax returns.[4]

Li should be estopped from claiming ownership to the properties because it is contrary to his tax returns admittedly since 1998. Litigants in civil suits are estopped from making representations to the court that are contrary to those made on income tax returns. See *Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415, 881 N.Y.S.2d 369, 909 N.E.2d 62 (2009) (see a copy of this case at CP 146-48). Li's home state's highest court has said, "[w]e cannot, as a matter of policy, permit parties to assert positions in legal proceedings that are contrary to declarations made under the penalty

[4] The 16th Amendment gave Congress the power to impose and collect income tax. It was proposed by the Sixty-first Congress on July 12, 1909, and was declared, in a proclamation of the Secretary of State, dated February 25, 1913, to have been ratified. U.S. Constitution Amendment 16, Explanatory Notes.

of perjury on income tax returns." *Id.*; see also *Naghavi v. NY Life Ins.*, 688 N.Y.S.2d 530, 531, 260 A.D.2d 252 (1999) (see a copy of this case at CP 149). Our Supreme Court also wants tax payers to be consistent and similarly discussed a "duty of consistency." See *Clemency v. State*, 175 Wn.2d 549, 569, 290 P.3d 99 (2012).

B. The trial court's summary judgment was based on undisputed facts and Li's own specific testimony; Li's unreasonable and conclusory statements are insufficient to raise an issue of fact.

It is well established that a party opposing summary judgment may not rely merely upon allegations or self-serving statements, but must set forth specific facts showing a genuine issue of material fact for trial. *Newton Ins. v. Caledonian Ins.*, 114 Wn. App. 151, 157, 52 P.3d 30 (2002). Ultimate facts, conclusions of fact, conclusory statements of fact or legal conclusions are insufficient to raise a question of fact. *Snohomish County v. Rugg*, 115 Wn. App. 218, 224, 61 P.3d 1184 (2002).

Li argued in the trial court below and argues again on appeal that the following raise factual issues: (1) he was not "kicked out of the house" but left in 1997; (2) the parties sold and split proceeds of another unrelated property in 2000; (3) his name was on a "joint" account for 17 years without alleging or providing evidence that he put any money in it; (4) his name was on some utility bills without alleging or providing any evidence that he paid any of the utility bills; (5) Li received an expense breakdown

in April 1998 (for the 1997 tax return); (6) Li was not notified of Van's adversely possessing the Subject Properties until being requested to transfer them in 2011; (7) Li thought Van was helping him until being sued in 2012. See CP 46-48; App. Br. at 19-21. However, these items are irrelevant or immaterial to the "hostility/claim of right" element and the *Chaplin* and *Nicholas* standards described in Section A above.

First, whether Li was kicked out or left after he brought a new wife home (Item 1) or whether Li and Van split sale proceeds of an unrelated property 15 years ago in 2000 (Item 2) are so obviously irrelevant/ immaterial to any dispositive issue that they require no explanation. As to Item 3, it is undisputed, as conceded by Li's counsel (RP 12:14-19), that Li was kept from the "joint" account and received no information about it throughout the entire period at issue, let alone putting any money in it or using it in any way. It is also undisputed that Li did not receive the utility bills with his name on it (Item 4) the whole time. RP 13:9-16 (Li's counsel agreed it's undisputed). These have no bearing on any dispositive issue.

Li's evidence that he received an income/expense breakdown (Item 5) for reporting on his 1997 tax return, but not 1998 or thereafter helps establish the hostility/claim of right element under *Chaplin* and *Nicholas*.

Li's conclusory statements that he did not receive notice until 2011 and he thought Van was "helping" him until 2012 (Items 6 and 7) are not

only unreasonable given his specific testimony about Van's excluding him in the late 1990s and 2000, but also insufficient to raise any issue of fact under *Snohomish County v. Rugg*, 115 Wn. App. at 224. No actual verbal or written notice of adverse possession is required. *Nicholas*, 1 Wn. App. at 137. Li's alleged subjective belief is irrelevant. The dispositive issue is the manner in which Van treated the Subject Properties. See *Chaplin*, 100 Wn.2d at 861 (nature of one's possession determined solely on the basis of the manner in which one treats the property). The way Van treated the Subject Properties since 1998 put Li on notice and leaves no doubt in any reasonable person's mind about her adverse possession for more than the required statutory period.

C. Li's express trust argument to toll the statute of limitation has no legal and factual basis and is belied by his own testimony that he had no agreement with Van to manage his finances.

Li's testimony establishing Van's adverse possession also show Li's counterclaims for partition and accounting are time-barred.

RCW 4.16.020 provides that the period of the commencement of actions shall be as follows:

> Within ten years: (1) For actions for the recovery of real property, or for the recovery of the possession thereof; and *no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the premises in question within ten years before the commencement of the action.*

RCW 4.16.020(1) (Emphasis added). The Washington Supreme Court is in accord. *Hyde v. Britton*, 41 Wash. 277, 281-282, 83 P. 307 (1906) (one who cannot show possession of premises by self within ten years cannot sue for partition); *Pilcher v. Lotzgesell*, 57 Wash. 471, 107 P. 340 (1910).

In the case sub judice, by his own admissions, Li has not been in Washington State from 1998 to 2012 and did nothing for well over 10 years, despite Van's allegedly withholding "his" money and allegedly seizing/taking the Subject Properties from him. Li's claim for partition is time-barred under RCW 4.16.020.

Li's claim is also separately and independently time-barred under RCW 4.16.040. The statute prescribes a 6-year limit on any "action for the rents and profits or for the use and occupation of real estate." RCW 4.16.040(3). Here, for the same reasons stated above, Li's claim for accounting is certainly time-barred.

Li argues the statute of limitation was tolled because of an express trust formed by virtue of an almost 3-decades-old, never-before-used general power of attorney (POA) signed by Li alone while the parties were still married. While creative, this argument is belied by Li's own testimony and is meritless. "Express trusts" are "those that are created by contract of the parties and intentionally." *Farrell v. Mentzer*, 102 Wash. 629, 632,

174 P. 482 (1918). Here, Li testified he had no agreement with Van to manage his finances, let alone any agreement to create any express trust. See CP 153:10-16 (Li's Dep. at p.77:7-13). The POA was signed by only Li during marriage. Van has never used it for anything. CP 217:8-9. Li cannot point to one single transaction where the POA was actually used by Van. Regardless of how lawyers from either side want to argue the POA, there was no contract required by *Farrell* for any express trust between Li and Van. Moreover, it is untenable and unreasonable to hold any other person responsible for one's unspecified properties for an indefinite period of time, forever, just by unilaterally signing a general POA.

Even assuming arguendo there were an express trust, an action based on an express trust is subject to the three-year statute of limitations in RCW 4.16.080. *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995). The statute of limitations on an express trust action begins to run when the beneficiary of the trust discovers or should have discovered the trust has been terminated or repudiated by the trustee. *Id.* A repudiation occurs when the trustee by words or other conduct denies there is a trust and claim the trust property as his or her own. *Id.* Here, the conclusive evidence of adverse possession also conclusively shows a repudiation of any alleged express trust as of 1998. Accordingly, any such action based on an express trust would have been long time-barred.

D. Li's motion for continuance after the trial court's summary judgment decision was untimely, failed to satisfy CR 56(f) requirements, and failed to specify evidence sought that would meet any dispositive issue or create any material issue of fact.

The trial court's decision under CR 56(f) is reviewed for manifest abuse of discretion. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 237 n.4, 88 P.3d 375 (2004); *Van Dinter v. Kennewick*, 64 Wn. App. 930, 936, 827 P.2d 329 (1992). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Roats v. Blakely Island Maint. Comm'n, Inc.*, 169 Wn. App. 263, 284, 279 P.3d 943 (2012). A trial court's decision is manifestly unreasonable if it is outside the range of acceptable choices. *Id.* Where a continuance is not clearly requested, the trial court does not err in deciding a summary judgment motion based on the evidence before it. See *Colwell v. Holy Family Hosp.*, 104 Wn. App. 606, 615, 15 P.3d 210 (2001).

In the case at bar, Li did not request any continuance before the originally scheduled October 2014 hearing or the rescheduled February 2015 hearing. During oral argument on February 27, 2015, Li's counsel appeared to indicate a need for more time in response to the trial court's question, but immediately negated that notion and chose to go on with the hearing. RP 8:9-16. After this Court had already granted the summary

judgment motion and signed the order, Li's counsel asked, "so it is too late to ask for a continuance of the hearing, your honor?" Since an unclear pre-ruling request for continuance is already unacceptable under *Colwell*, a never-made one (untimely one made after the fact) here is certainly not acceptable. Frankly, it appears that Li's motion for continuance was an afterthought in an attempt to change this Court's mind about its summary judgment decision. Being such, the request cannot be made properly under CR 56(f), and the trial court properly denied it.

Assuming arguendo that a timely CR 56(f) motion had been made, no continuance would have been warranted. A CR 56(f) motion requires the party seeking a continuance to offer "a good reason for the delay in obtaining the discovery" and "provide an affidavit stating what evidence the party seeks and how it will raise an issue of material fact to preclude summary judgment." *Durand v. HIMC Corp.*, 151 Wn. App. 818, 828, 214 P.3d 189 (2009); see also *Farmer v. Davis*, 161 Wn. App. 420, 430, 250 P.3d 138 (2011) (requires showing why a party is unable to respond without the extension and what essential facts he needs to secure); *In re Estate of Fitzgerald*, 172 Wn. App. 437, 449, 294 P.3d 720 (2012) (continuance properly denied where the request was “mere speculation and a fishing expedition).

In the case sub judice, Li failed to offer a good reason for the delay

in obtaining the desired evidence given that this case has been pending for literally years (since 2012). As stated in the Summary of the Proceedings section above, Li through counsel wanted to get the motion for summary judgment decided last year in 2014 as originally scheduled without the need for any additional discovery because the parties and their attorneys all knew and agreed that the motion for summary judgment should be decided first before tremendous amounts of time and resources should be spent to pursue discovery of information, documents and witnesses going back well over 20 to nearly 30 years.

Moreover, Li failed to state any specific evidence to be established through additional discovery or how the desired evidence will raise an issue of material fact. In his motion for reconsideration, Li only stated that there may have been other "joint" bank accounts, that Van may have used the power of attorney signed when the parties were married in the 1980s, and that Li wanted to know why Van sent an income/expense breakdown for 1997 and why she agreed to share proceeds of an unrelated property in 2000. CP 191. However, there had already been plenty of discovery on both the "joint" account and power of attorney. Van was extensively questioned under oath for an entire day about, among other things, the power of attorney and "joint" accounts, along with the actual power of attorney and bank statements as deposition exhibits. Li and his

counsel either have known or should have known/ascertained everything they desired to know during the years this case has been pending about "joint" accounts, the power of attorney, why Van sent the 1997 income/ expense breakdown, and why Van shared the proceeds of the unrelated property in 2000. See CP 170:6-14 (Jenny Wong declaration), CP 216:19-217:9 (Van declaration).

More importantly, where the discovery sought would not meet the issue that the moving party contends contains no genuine issue of fact, it is not an abuse of discretion to decide the motion for summary judgment without granting discovery. *Van Dinter v. Kennewick*, 64 Wn. App. 930, 937, 827 P.2d 329 (1992). No matter what the reasons were for sending the 1997 income/expense breakdown or for sharing sale proceeds of an unrelated property in 2000, they are irrelevant and immaterial to the dispositive issues and have no bearing on the summary judgment. None of Li's purportedly desired evidence would create any material issue of fact. The trial court did not abuse its discretion in denying Li's CR 56(f) motion for continuance.

VI. CONCLUSION

It is truly sad that Li would use the false hope of reconciliation to get his names on properties or Van's name on loans in the 1980s and the 1990s, even after the parties' divorce. Not satisfied with his “many” other

properties and having been able to pay cash for a home in New York (CP 156:26-157:24, CP 164:13-21), Li dragged his feet on clearing the titles to the Subject Properties and now shamelessly attempts to take what he knew has belonged to Van all along since a very long time ago.

Van respectfully asks this Court to affirm the trial court's summary judgment order.

Respectfully submitted this 25th day of November, 2015.

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COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION I

VAN NHU HUYNH, Respondent, vs. LEUNG HING LI, Appellant.	No. 73457-1-I CERTIFICATE OF SERVICE

I certify that, on this day, I caused to be served a true and correct copy of Brief of Respondent and this Certificate of Service upon the following:

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Dated this 25th day of November, 2015.

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