No. 93416-9
Court of Appeals, Division I, No. 748491-I

SUPREME COURT

OF THE STATE OF WASHINGTON

SANDRA J. KEATLEY,

PLAINTIFF/RESPONDENT,

vs.

DUANE BRUNER

DEFENDANT/APPELLANT.

RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

By MATTHEW J. ANDERSEN
Attorney for Plaintiff

MATTHEW J. ANDERSEN
WSBA #30052
WALSTEAD MERTSCHING PS
Civic Center Building, Third Floor
1700 Hudson Street
Post Office Box 1549
Longview, WA 98632
Telephone: (360) 423-5220
Fax: (360) 423-1478
Email: mjandersen@walstead.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (continued)

TABLE OF AUTHORITIES (continued)

Other Authorities:

I. STATEMENT OF THE CASE

In 2002, Sandra Keatley and Duane Bruner ended their eighteen year marital-like relationship. [RP1, p41-43, p100-01; RP2, p87] During that time, Sandra and Duane built a home on land that had been in Sandra's family for over one hundred years. [RP1, p39]

Sandra continued to live in the Chapman House after her marital-like relationship with Bruner had ended. She saw the house as hers and her daily routine of using the house as her residence and the barn for her cattle did not change. [RP1, p101-02, p145; RP2, p29-35, p97-98]

In March of 2005, Bruner came into the kitchen at the Chapman House while Sandra was preparing herself a meal. [RP1, p105] Bruner sat down at the kitchen table and took off his boots. He said, "You buy this place from me, or I am selling it." Sandra dropped what she was doing and went to her office in the house. She typed up a document that she entitled "Earnest Money Receipt and Agreement." [EX 20] Sandra left the purchase price blank. She handed it to him and told him to name his price. The next day, she found the contract signed, sitting on her desk in the Chapman House, with the purchase price of $295,000.00 filled in. She immediately signed the contract and returned it to Bruner with a $1,000.00 earnest money check. [RP1, p104-07]

Sandra did not put a closing date on the contract. She needed some

time to marshal her assets and purchase the property. She had given up her career at Rite-Aid years before and was not in the financial position to purchase the property in 2005. [RP1, p107]

Between the years 2005 and 2010, Sandra often bumped into Bruner as she made daily use of the Chapman Road property. She repeatedly questioned Bruner with regard to whether she needed to close on the purchase of the property. Each time Bruner told her that he was in no hurry and she could wait. [RP1, p108] These conversations occurred at least once every three months between 2005 and 2010. Sandra would also leave notes for Bruner at the Chapman House asking when he wanted to close on the sale. [RP1, p148-49; EX 55] Bruner never told Sandra that the contract had expired, that he needed the money, that he wanted to close the sale, or that he would not sell her the land. [RP1, p109] Sandra relied on Bruner's assurances that she could close on the property at a later date. Had he demanded closing, she would have done so. [RP1, p112]

In October of 2010, Sandra told Bruner that she was ready to buy the property. He refused to sell it to her. [RP1, p110; RP2, p89-90] Shortly thereafter, Sandra filed suit seeking specific performance of the March 2005 contract.

Sandra prevailed at trial. The trial court ordered Bruner to sell her the Chapman House under the terms described in the March 2005 contract.

In August of 2015, Sandra closed on the purchase of the property and now resides in the Chapman House once again. [CP 448]

II. ARGUMENT

Bruner's *Petition for Review* fails to identify any aspect of this case that meets the criteria provided in RAP 13.4(b). Sandra's arguments herein are presented so that they track with the specific assignments of error in Bruner's *Petition for Review.*

A. Delivery of the $1,000.00 earnest money occurred when Sandra tendered her personal check. [*Petition for Review,* p.5]

Sandra testified that she handed the $1,000.00 earnest money check to Bruner. [RP2, p157-58] Bruner denied receiving the $1,000.00 check. The court found that Sandra was a credible witness and Bruner was an incredible witness. [RP2, p199] Furthermore, the contract, which Bruner signed, acknowledged his receipt of the earnest money check:

> Purchaser hereby deposits, and receipt is hereby acknowledged of, ONE THOUSAND ($1,000.00) DOLLARS, evidenced by personal check paid or delivered as earnest money in part payment of the purchase price for the aforedescribed real estate. [EX 20]

The Court of Appeals ruled that the tender of the earnest money was sufficient consideration to make the contract binding. Bruner claims error, citing a number of cases that stand for the proposition that a contract without consideration is unenforceable. However, none of these cases

hold that the tender of a personal check is insufficient consideration.

Consideration is "any act, forbearance, creation, modification or destruction of a legal relationship, or return promise given in exchange." *King v. Riveland*, 125 Wash.2d 500, 505, 886 P.2d 160 (1994). When Sandra handed Bruner the $1,000.00 check, she handed him the right to go to her bank and demand payment of $1,000.00. Tendering a negotiable instrument is present consideration regardless of whether the party receiving the instrument collects on it in the future. Under Bruner's reasoning, had Sandra given Bruner a promissory note, Bruner could have retroactively voided the contract by secretly destroying or otherwise taking no action on the debt.

Counsel for Bruner took the position in oral argument before the Court of Appeals that Bruner was free to keep the earnest money check in his hip-pocket and, at anytime, elect to nullify the contract by returning or destroying the check. Aside from the fact that there was no evidence at trial that Bruner returned or destroyed the check, the policy behind such a rule is foolish. It is easy to imagine the chaos that would result if any real estate contract could be escaped by the seller if he or she simply refused to deposit or cash the purchaser's earnest money check.

Second, the contract did not require Sandra to tender $1,000.00 cash. It specifically called on her to tender a "personal check." Where a

creditor agrees or consents to receive a check of the debtor as payment, the original indebtedness is extinguished or reduced by receipt of the check, whether or not the check is actually paid. 70 C.J.S. *Payment* § 23 (2016).

Bruner agreed in writing to accept a personal check as payment of the $1,000.00 earnest money. Sandra's obligation to pay the earnest money was satisfied upon tendering the personal check. Even if the contract had required cash, Sandra's obligation to pay the earnest money would have been suspended under RCW 62A.3-310(b), which states:

> (b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:
>
> > (1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

When Sandra handed Bruner her personal check, her hypothetical obligation to tender $1,000.00 cash was suspended until payment or dishonor of the check. That is, the contract became enforceable upon receipt regardless of whether Bruner negotiated the personal check later.

Third, this is not a case of first impression. In *Maryatt v. Hubbard*, 33 Wn.2d 325, 205 P.2d 623 (1949), Maryatt orally contracted with

Hubbard to purchase a greenhouse. Maryatt delivered a check for the purchase price and Hubbard accepted it. Hubbard never negotiated the check. Before the greenhouse was removed, Hubbard sold her home to purchasers who had insisted that the greenhouse be a part of the sale. Hubbard returned the check to Maryatt and repudiated the sale.

Maryatt built a new greenhouse and sued Hubbard for the difference in cost. Maryatt prevailed in trial. The Supreme Court of Washington *affirmed,* stating: "The trial court found that appellant accepted the check in full payment for the greenhouse, and this finding is amply supported by the evidence." *Id.* at 333, 205 P.2d 623.

The facts of the *Maryatt* case are directly on point. If the actions of the parties are consistent with the delivery of a personal check as payment under a contract, then the delivery and acceptance of such personal check shall be valid consideration. The contract in question is unequivocal: a personal check shall be delivered as earnest money. Bruner accepted the check and signed the contract.

Fourth, the $1,000.00 was not necessary to create a binding contract. Sandra and Bruner entered into a bilateral contract and, therefore, the exchange of promises is the consideration that makes it binding. She promised to buy the house and he promised to sell the house. Consideration is a bargained-for exchange of promises. *Williams Fruit*

Co. v. Hanover Ins. Co., 3 Wash.App. 276, 281, 474 P.2d 577 (1970); *Flower v. T.R.A. Industries, Inc.*, 127 Wn.App. 13, 27, 111 P.3d 1192 (2005); *Cook v. Johnson,* 37 Wash.2d 19, 23, 221 P.2d 525 (1950); *Multicare Med. Ctr. v. Dep't of Soc. & Health Servs.,* 114 Wash.2d 572, 583, 790 P.2d 124 (1990); *Govier v. N. Sound Bank,* 91 Wash.App. 493, 499, 957 P.2d 811 (1998).

In the case at bar, the undisputed evidence is that Sandra promised to pay Bruner $295,000.00 and Bruner promised to convey to her the Chapman House. This is a bilateral contract and, therefore, the exchanged promises are the consideration that makes it binding.

Bruner argues that the $295,000.00 purchase price ordered by the court is an admission that the $1,000.00 was never tendered. If the $1,000.00 had been tendered, so the argument goes, the purchase would have been $294,000.00. However, the court's findings and conclusions specifically state that the $1,000.00 earnest money was paid to Bruner. The failure to subtract this $1,000.00 from the ultimate purchase price can be explained in two ways. First, since the court viewed the contract as a purchase option, the $1,000.00 payment would not necessarily be applied to the ultimate purchase price. That is, Sandra purchased, for $1,000.00, the right to purchase the property at a later date for $295,000.00.

The other explanation, which the Court of Appeals specifically

adopted, was that the failure to reduce the purchase price to $295,000.00 in the court's findings of fact and conclusions of law was a scrivener's error committed by counsel for Keatley. The trial court unequivocally found that the $1,000.00 had been paid. [*Findings of Fact and Conclusions of Law,* page 2, paragraph 2.] Bruner cannot overcome this by arguing that the purchase price of $295,000.00 creates an inference that the court found otherwise. At most, the case would need to be remanded to have the purchase price corrected and an order entered requiring Bruner to refund $1,000.00 of the purchase money he received. Sandra, however, does not seek this or any other relief from this court.

B. The contract contains all essential terms. [*Petition for Review,* p.7]

At trial, Sandra and Bruner agreed that the trial court had the authority to infer a reasonable period of time for the closing date on this transaction. Bruner advocated for six months. Sandra advocated for five and a half years. The trial court ruled against Bruner, and now he wants to argue that the entire contract is too vague to be enforced. Trial is over and the contract has been executed upon. Sandra owns the land. The time for making that argument has long passed. Furthermore, the argument fails.

The "Earnest Money Receipt and Agreement" at the heart of this dispute identifies the buyer and seller, identifies the land to be sold by

reference to tax parcel number, identifies a purchase price, and sets forth the condition of title to be transferred. Although the parties drafted the contract without the help of attorneys, this is not a hastily thrown together napkin agreement. Bruner complains that the contract is missing essential terms, but he cannot deny that the property was transferred to Keatley in August of 2015 without confusion.

In arguing that essential terms were missing, counsel for Bruner ignores the distinction between a real estate purchase and sale agreement (REPSA) and a real estate contract (REK). An REPSA binds a seller to sell and a buyer to buy a piece of property. An REK is a financing device that binds the seller to accept payments over a long period of time while continuing to hold title until the purchase price is fully paid. Bruner cites two REK cases in support of his argument that essential terms are missing. While *Hubbell v. Ward* and *Sea-Van Investments v. Hamilton* say what they say with regard to REKs, they are silent when it comes to real estate purchase and sale agreements.

To grasp the importance of this distinction, the court need look no further than the two cases cited by Bruner. In *Hubbell v. Ward,* 40 Wn.2d 779, 787-89, 246 P.2d 468 (1952), the Washington Supreme Court found that essential terms were missing with regard to the creation of an REK, but the contract was fully enforceable as an REPSA:

> The agreement contains within itself the essential elements of a binding contract for the purchase and sale of the real estate and personal property described therein. Respondents are given an option to pay the entire consideration at any time. The subject matter of the agreement, the consideration and terms of payment are all set forth and it is evident from a consideration of all the terms of the agreement that it was not intended merely as a preliminary negotiation. It was intended as, and is, a valid contract, enforcible [sic] except insofar as it involves the make of a future [financing] contract.

As in *Hubbell,* the contract in question would not be sufficient to create an REK, but it contains all the terms necessary to create a binding REPSA.

The second case cited by Bruner, *Sea-Van Investments v. Hamilton*, 125 Wn.2d 120, 129, 882 P.2d 173 (1994), also involved a contract for seller-financed purchase and sale of land. In fact, the *Sea-Van Investments* court defined a "real estate contract" as "a specific form of financing which leaves legal title to the real property in the seller to secure repayment of the purchase obligation." *Id.* at 128 fn.4, 881 P.2d 1035. Sandra and Bruner only contracted for the purchase and sale of the property. There was no agreement regarding seller-financing.

C. Substantial evidence supports the trial court's finding that Sandra demanded closing within a reasonable amount of time. [*Petition for Review,* p.10]

Open-ended option contracts and earnest money agreements are enforceable in Washington. However, the court will examine the circumstances of the transaction and place a reasonable time limit on the

execution of the contract. *Foelkner v. Perkins*, 197 Wash. 462, 85 P.2d 1095 (1938) ("The agreement is also not rendered fatally defective because no definite time limit is fixed within which the property must be sold; under these circumstances the law implies a reasonable time for performance . . ."); *Merchents' Bank of Canada v. Sims*, 122 Wash. 106, 209 P. 1112 (1922) ("The general rule is that, where a thing is to be done, and no time is fixed, it will be presumed that a reasonable time was intended.").

The primary issue the parties placed before the trial judge was whether Sandra's demand to close in October of 2010 fell within a "reasonable amount of time" as inferred from the surrounding circumstances. Bruner argued that six months was a reasonable amount of time. Sandra argued that five and half years was a reasonable amount of time. The court found in favor of Sandra and substantial evidence supports the verdict.

The trial court referenced *Thompson v. Thompson*, 1 Wn. App. 196, 460 P.2d 679 (1969), throughout the trial. In *Thompson,* a father sold property to his son that included an option to purchase additional adjoining land for a fixed price. The contract fixed no definite time limit by which the son was required to exercise the option. The son attempted to purchase the property twelve years later and the father refused to sell,

claiming that the option had expired. The trial court found in favor of the father and dismissed the son's claim for specific performance. The court of appeals *reversed,* stating:

> If we were to construe this option as fixing no definite time we would be subject to the rule that it must be exercised within a reasonable time. Restatement of Contracts § 46 (1932). See also 91 C.J.S. *Vendor and Purchaser* § 4 (1955); and 17A C.J.S. *Contracts* § 632 (1963). What is a reasonable time is to be determined by the circumstances of the case. Considering the familial relationship, the apparent purpose of the parties that the parents live on the property as long as they desired and for the son and his wife to eventually take it and the "estate" language in the option, we do not believe that the 12-year interval between the granting and the exercise of the option was excessive.

Id. at 201, 400 P.2d 679.

Sandra also cited *Lawson v. Redmoor Corp.,* 37 Wn. App. 351, 679 P.2d 972 (1984), wherein the court of appeals affirmed a trial court decision finding that eight years was a reasonable amount of time to exercise an open-ended real estate purchase option.

In the case at bar, it was undisputed that Sandra had a deep connection to the land that was the subject of the contract. She had suggested that Bruner buy the land after her sister died so that it would "stay in the family." Sandra and Bruner enjoyed a twenty year committed relationship. They developed the property together and made joint use of adjoining land that Sandra owned. Sandra designed, decorated,

maintained, and resided in that house. Sandra believed that she and Bruner had a monogamous relationship and she, as well as others in the Castle Rock community, saw Bruner as part of the Keatley family. While the bonds of blood or marriage may be missing from this case, substantial evidence supports the trial court's finding that a deep familial relationship existed between Sandra and Bruner.

Furthermore, Bruner's *Petition for Review* simply ignores one of the most important issues in this case. Sandra also asked the trial court to find that Bruner was equitably estopped from refusing to sell her the property in October 2010. Sandra's testimony established that she repeatedly checked in with Bruner, both in writing and verbally, regarding the need to close on the sale of the property. Not once did Bruner tell her that she was running out of time, that the deal was off, or that he would not sell her the property. Bruner admitted this at trial. [RP2, p143-45] Bruner's response was always the same: "I'm in no hurry. I don't need the money." Sandra also testified that had Bruner responded differently, she would have done what was needed to close on the purchase.

Equitable estoppel is based on the view that "a party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied thereon." *Lybbert v. Grant County*, 141 Wn.2d

29, 35, 1 P.3d 1124 (2000). Substantial evidence supports the trial court's finding that Bruner lulled Sandra by assuring her that she could wait to purchase the property at a later date.

D. Bruner failed to argue that the contract was unenforceable at trial and, therefore, is precluded from doing so on appeal. [*Petition for Review,* p.12]

At trial, Bruner did not challenge the enforceability of the March 2005 contract. The primary issue presented was whether Sandra demanded closing within a reasonable amount of time under *Thompson v. Thompson.* In his opening statement, counsel for Bruner teed up the issue for the court:

> And then [sic] contract just fails because it lacks an essential term, the time allowed for execution of the so-called contract. And again the earnest money agreement lacked that deadline, and case law will imply a reasonable time for exercise of the agreement. A reasonable time is not years but months. The plaintiff failed to act within a reasonable time. [RP1, p35]

The parties framed the issues for the court, presented evidence, and the trial court ruled on what was before it. Now that he has lost, Bruner wants to interject new issues into the case based not only on a static record, but also findings and conclusions that were crafted to address only those issues presented at trial.

Bruner never mentioned the words "restraint on alienation" or "rule against perpetuities" in his answer, pre-trial briefing, opening

statement, mid-trial motion to dismiss, or closing argument. [RP1, p33-37; RP2, p16-26 and p181-88; CP 422 and 441] Bruner waived these arguments under CR 8(c), which required "any other matter constituting an avoidance or affirmative defense" to be pleaded in his answer, raised in a CR 12(b)(6) motion, or tried to the court by consent.

Unreasonable restraint of alienation and the rule against perpetuities fall within the definition of an "avoidance or affirmative defense." The Division III Court of Appeals in *Harting v. Barton,* 101 Wn.App. 954, 961, 6 P.3d 91 (2000), defined an "avoidance or affirmative defense" as "[a]ny matter that does not tend to controvert the opposing party's prima facie case." (quoting *Shinn Irrigation Equip., Inc. v. Marchand,* 1 Wash.App. 428, 430–31, 462 P.2d 571 (1969)).

In the case at bar, Bruner does not claim that the parties never had an agreement, nor does he claim, for the purposes of this defense, that he did not breach the agreement. Bruner alleges, for the first time on appeal, that the contract is void as a restraint on alienation and, therefore, it does not matter whether he breached it. Bruner's unreasonable restraint on alienation/rule against perpetuities arguments, therefore, constitute "avoidances." Since he has not pleaded these defenses in his answer, raised them in a CR 12(b)(6) motion, nor tried them to the court by consent, Bruner has waived these defenses.

The harm caused by Bruner's failure to plead or otherwise raise these arguments at trial is especially high with regard to the unreasonable restraint on alienation defense. A trial court's inquiry into whether a contract is an unreasonable restraint on alienation is highly factual. Bruner's failure to raise this defense severely prejudices Sandra in that she was robbed of the opportunity to develop a factual record directed at this allegation. The trial court is also prejudiced in that it was deprived of the opportunity to make factual rulings with regard to this defense.

Counsel's argument regarding the trial court's use of the word "open-ended purchase option contract" proves this point. Had Bruner's unreasonable restraint on alienation/rule against perpetuities arguments been presented at trial, the court could have crafted findings and conclusions that specifically addressed these points. The court used the words "open-ended" and now, appellate counsel who was not even present at the trial, argues that the court meant "open-ended forever."

But the court never made that finding nor did it have the possibility of such a finding brought to its attention by the parties. Instead, the court properly focused its analysis on the primary issue actually presented, whether Keatley demanded closing within a reasonable amount of time.

Moreover, it would not have mattered if the parties' subjectively intended for the contract to remain open forever. Washington follows the

objective theory of contracts. *Max L. Wells Trust v. Grand Cent. Sauna & Hot Tub Co. of Seattle*, 62 Wash.App. 593, 602, 815 P.2d 284 (1991). The court will impute an intention corresponding to the reasonable meaning of the words used. *Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 123 Wash.2d 678, 684, 871 P.2d 146 (1994). The subjective intent of the parties is irrelevant. *City of Everett v. Estate of Sumstad*, 95 Wash.2d 853, 855, 631 P.2d 366 (1981). The court does not interpret what was intended to be written but what was written. *J.W. Seavey Hop Corp. of Portland v. Pollock*, 20 Wash.2d 337, 348–49, 147 P.2d 310 (1944).

The contract does not contain a closing date. The only inference that can be drawn from this, and the one that is required by Washington law, is that the parties intended for closing to occur within a reasonable time. If the parties had intended to create an "open-ended forever" purchase option, they would have written it into their contract. Even if the court were to find that Bruner and Keatley subjectively intended to create a never-ending purchase option, such intent was not expressed in the contract, and, therefore, would be irrelevant.

Bruner asks the court to adopt this radical interpretation of the trial court's findings and conclusions so that he can then make his tardy rule against perpetuities/unreasonable restraint of alienation arguments. Bruner goes so far as to argue that the primary issue at trial never even

mattered because, in the end, the trial court used the term "open-ended." But the trial court cannot be faulted using language that, if stretched to its most radical meaning, is susceptible to arguments based on arcane legal theories that were not hinted at before, during, or after trial.

Furthermore, Bruner ignores the fact that neither he nor Sandra testified that they intended to leave the contract open forever. They both testified that they expected to close within a reasonable amount of time, disagreeing only as to what length of time was reasonable under the facts and circumstances of the case. Bruner's new attorney is the only person who thinks the contract was intended to be open-ended forever.

The Court of Appeals properly rejected Bruner's attempt to nullify four years of litigation and a week of trial with his new theories as to why he should not have to keep his word and sell the house to Sandra. *See Washburn v. Beatt Equipment Co.*, 120 Wash.2d 246, 290-91, 840 P.2d 860 (1992). "A lawsuit cannot be tried on one theory and appealed on others." *Teratron General v. Institutional Investors Trust,* 18 Wn.App. 481, 489, 569 P.2d 1198 (1977)(refusing to consider arguments regarding the statute of frauds and meeting of the minds which were raised as "afterthoughts" following the trial court's oral ruling.") This is what Bruner attempts to do with this appeal. He alleges myriad new theories that never saw the light of day during the four years that this case was

litigated. This not only deprived the trial court of the ability to consider and rule on these theories, it deprived Keatley of the ability to present argument, authorities, and evidence to defeat them.

And finally, Bruner argues that the "failure to establish facts upon which relief can be granted" defense subsumes and swallows up his duty to plead and prove all other affirmative defenses. This nonsensical argument completely nullifies CR 8(c) and Washington's case law regarding a defendant's obligation to plead, argue, and prove his own affirmative defenses at trial. This court cannot find that Keatley failed to present facts that support the verdict because she failed to disprove affirmative defenses that the Defendant never raised in the first place.

Bruner fails to cite, and counsel is unaware of, any case law that supports the argument that the rule against perpetuities and unlawful restraint of alienation claims can be raised for the first time on appeal under the guise of a general "failure to establish facts upon which relief can be granted."

Worse still, Bruner made no assignment of error or otherwise used the words "failure to establish facts upon which relief can be granted" in his opening brief at the appellate court level. This new defense was raised for the first time in Bruner's reply. Arguments and defenses raised for the first time in an appellant's reply brief should not be considered by the

court. *State v. Hudson*, 124 Wash.2d 107, 120, 874 P.2d 160 (1994); *Wood v. Postelthwaite*, 82 Wash.2d 387, 389, 510 P.2d 1109 (1973).

Bruner failed to raise the defense that he is now using to cover his previous failure to raise two other defenses. One can only wonder what new arguments and defenses will be raised in Bruner's next filing.

E. The contract is not an unreasonable restraint of trade nor does it violate the rule against perpetuities.

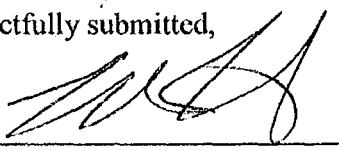
Real estate purchase options are not unreasonable restraints of trade, nor do they violate the rule against perpetuities if they can be limited to a reasonable duration by the court. *See Lawson*, 37 Wn.App. at 354-55 and fn.1, 679 P.2d 972; *Fieder*, 40 Wn.App. at 592, 699 P.2d 801; *Robroy Land Company, Inc.*, 95 Wn.2d at 74, 622 P.2d 367.

III. CONCLUSION

The Supreme Court should deny Bruner's *Petition for Review* and award Sandra her costs as provided by RAP Title 14.

DATED: September 2, 2016.

Respectfully submitted,



MATTHEW J. ANDERSEN, WSBA #30052
Of Attorneys for Plaintiff

CERTIFICATE

I certify that on this day I caused a copy of the foregoing RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR REVIEW to be mailed, postage prepaid, and e-mailed to Defendant's attorney, addressed as follows:

Richard B. Sanders
Goodstein Law Group PLLC
501 South G Street
Tacoma, WA 98405
Email: rsanders@goodsteinlaw.com

DATED this 29 day of September 2016, at Longview, Washington.

KARA L. COPE

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, September 02, 2016 12:43 PM
To: 'Kara L. Cope'
Subject: RE: Keatley v. Bruner/Supreme Court of the State of Wa. Cause No. 93416-9

Received 9/2/16.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:
http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:
http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:
http://dw.courts.wa.gov/

From: Kara L. Cope [mailto:cope@walstead.com]
Sent: Friday, September 02, 2016 12:32 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Keatley v. Bruner/Supreme Court of the State of Wa. Cause No. 93416-9

Clerk:

Attached for filing is Respondent's Answer to Appellant's Petition for Review in the case Keatley v. Bruner, Supreme Court of the State of Washington Cause No. 93416-9.

Thank you

Kara L. Cope
Paralegal to Matthew J. Andersen
--

Kara L. Cope
Paralegal
WALSTEAD MERTSCHING
--ATTORNEYS AT LAW--
Civic Center Building, Third Floor
1700 Hudson Street
PO Box 1549
Longview, WA 98632-7934
A Professional Service Corporation
mail to: cope@walstead.com
(360) 423-5220 / (360) 423-1478 (fax)
www.walstead.com